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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 724

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

vs.

CHICAGO HEIGHTS TRUCKING CO., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED FEBRUARY 14, 1940

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1 [Caption omitted.]

3 IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

In Equity No. 907

CHICAGO HEIGHTS TRUCKING COMPANY; THE ELGIN TRANSFER & STORAGE COMPANY; M. E. SEIWERT FORWARDING CO.; THE MOTOR EXPRESS, INC., OF IND.; THE LAFAYETTE-INDIANAPOLIS TRANSIT COMPANY, INC.; SOUTHERN TRANSPORTATION COMPANY, DAYS TRANSFER, INC.; HESLER TRANSFER COMPANY, INC.; MOTOR DISTRIBUTING CORP.; WINDER AND SON, INC.; MCDANIEL FREIGHT LINES, INC.; BLOOMINGTON, BEDFORD & INDIANAPOLIS MOTOR FREIGHT, INC.; C. W. CLOVER, d/b/a LBK&K TRANSIT COMPANY; COORDINATED TRANSPORT, INC., OF ILLINOIS; CRIPPS OVERLAND EXPRESS, INC.; NORTHWESTERN TRANSIT, INC.; TONY CONSENTINO, d/b/a MOTOR SERVICE; FRED OLSON & SON MOTOR SERVICE, INC.; J. L. SHEFFLER, d/b/a J. L. SHEFFLER FORWARDER; WEST SHORT TRANSPORT COMPANY, SUCCESSOR IN INTEREST TO M. J. SEIWERT FORWARDING CO., YGLE TRUCK LINES, INC.; AURORA TRANSFER COMPANY; CONSOLIDATED CARTAGE COMPANY, INC.; CONSOLIDATED FORWARDING CO., INC.; HENRY, WALTER H., AND ELMER M. HEISTERBERG, d/b/a CROWN POINT TRANSFER COMPANY; CUSHMAN MOTOR DELIVER CO.; GOLD STAR MOTOR SERVICE, INC.; JOLIET WAREHOUSE & TRANSFER CO.; KREMA TRUCKING COMPANY; FRANK KUTZLER, JR., d/b/a KUTZLER CARTAGE; MARTIN TRANSFER & STORAGE CO.; MEINKE & SONS, INC.; C. W. NEIDERT, d/b/a NEIDERT MOTOR SERVICE; NORTHERN ILLINOIS FREIGHT LINES, INC.; NORTH SHORT MOTOR EXPRESS COMPANY, INC.; PAGORIA'S EXPRESS SERVICE, INC.; PENNOYER MERCHANTS TRANSFER COMPANY; ROOSEVELT CARTAGE COMPANY; SCHIEK MOTOR EXPRESS, INC., SERVICE CARTAGE CO., INC.; N. C. SORENSON MOTOR EXPRESS COMPANY, INC.; MATTHEW C. WELCH AND ROBERT J. WELCH, d/b/a WELCH BROS. MOTOR SERVICE; AND WILLIAM HOEKSTRA AND JOBB HOEKSTRA, d/b/a HOEKSTRA MOTOR EXPRESS, PLAINTIFFS

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

4 *Complaint filed Sept. 6, 1939*

To the Honorable JUDGES OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS:

Plaintiffs bring this petition against defendants under Section 205 (h) of the Motor Carrier Act, 1935 (U. S. Code, Sup. 1, Title 49, Sec. 305 (h)) and under the Acts of Congress, Code of

Laws of U. S., Title 28, Secs. 41 (28), 32 to 48, inclusive, and hereby sue to enjoin, set aside, suspend, and annul a certain order of the defendant Interstate Commerce Commission of the United States, hereinafter called Commission, made and entered by the Commission in its Investigation & Suspension Docket No. M-247, in a proceeding entitled "Proportional Rates Between Chicago and Wisconsin Points," on July 29, 1939, ordering and directing Plaintiffs to cancel on or before October 10, 1939, certain tariffs hereinafter more particularly described.

In support of said complaint, your petitioners, the Plaintiffs herein, allege:

I. Parties

Plaintiffs are each corporations, organized and engaged as common carriers by motor vehicle of property, by the laws of the several states in which they operate and by the Motor Carrier Act, 1935, between the points and places set out in the aforesaid tariffs, their respective states of incorporation and residence being as shown in the following pages:

Name of plaintiff	State of incorporation	Residence and principal operating office
Chicago Heights Trucking Co	Illinois	Chicago Heights, Ill.
The Elgin Transfer & Storage Co	Illinois	Elgin, Illinois.
The Motor Express, Inc. of Ind	Indiana	Fort Wayne, Indiana.
The Lafayette-Indianapolis Transit Company, Inc	Indiana	Lafayette, Indiana.
Days Transfer, Inc	Indiana	Elkhart, Indiana.
Hesler Transfer Company, Inc	Indiana	Ellwood, Indiana.
Motor Distributing Corp	Indiana	Richmond, Indiana.
Winder and Son, Inc	Indiana	Marion, Indiana.
McDaniel Freight Lines, Inc	Indiana	Crawfordsville, Ind.
Bloomington, Bedford & Indianapolis Motor Freight, Inc	Indiana	Bloomington, Ind.
C. W. Clever, d/b/a L. B. K. & I. Transit Company		Indianapolis, Ind.
Coordinated Transport, Inc., of Illinois	Illinois	Chicago, Illinois.
Cripps Overland Express, Inc	Illinois	Chicago, Illinois.
Northwestern Transit Co., Inc	Indiana	Michigan City, Ind.
Tony Consentino, d/b/a Motor Service		Chicago, Illinois.
Fred Olson & Son Motor Service, Inc	Illinois	Chicago, Illinois.
J. L. Sheffler, d/b/a J. L. Sheffler Forwarder		Chicago, Illinois.
West Shore Transport Company, successor in interest to M. J. Seiwert Forwarding Co.	Wisconsin	Sheboygan, Wisconsin.
Yule Truck Lines, Inc	Wisconsin	Kenosha, Wisconsin.
Aurora Transfer Company	Illinois	Aurora, Illinois.
Consolidated Cartage Company, Inc	Illinois	Chicago, Illinois.
Consolidated Forwarding Co., Inc	Missouri	St. Louis, Missouri.
Henry, Walter H., and Elmer M. Heisterberg, d/b/a Crown Point Transfer Company		Crown Point, Indiana.
Cushman Motor Delivery Co	Illinois	Chicago, Illinois.
Gold Star Motor Service, Inc	Illinois	Barrington, Illinois.
Joliet Warehouse & Transfer Co	Illinois	Joliet, Illinois.
Krema Trucking Company	Illinois	Chicago, Illinois.
Frank Kutzler, Jr., d/b/a Kutzler Cartage		Waukegan, Illinois.
Martin Transfer & Storage Co	Illinois	Aurora, Illinois.
Meinke & Sons, Inc	Indiana	La Porte, Indiana.
C. W. Neidert, d/b/a Neidert Motor Service		Des Plaines, Illinois.
Northern Illinois Freight Lines, Inc	Illinois	Rockford, Illinois.
North Shore Motor Express Company, Inc	Illinois	Chicago, Illinois.
Pagerit's Express Service, Inc	Illinois	Chicago Heights, Ill.
Penroyer Merchants Transfer Company	Illinois	Chicago, Illinois.
Roosevelt Cartage Company	Illinois	Chicago, Illinois.
Schiek Motor Express, Inc	Illinois	Joliet, Illinois.
Service Cartage Co, Inc	Illinois	Lemont, Illinois.
N. C. Sorenson Motor Express Company, Inc	Illinois	Chicago, Illinois.
Matthew C. Welch and Robert J. Welch, d/b/a Welch Bros. Motor Service		Hammond, Indiana.
William Hoekstra and John Hoekstra, d/b/a Hoekstra Motor Express		Chicago, Illinois.

6 No person or party protested or complained to the Commission against the publication of the aforesaid tariff, but, as hereinafter set out, the same were suspended upon the Commission's own motion. At the argument before the Commission upon reconsideration, the Association of Railroad Carriers of the Western District intervened in opposition to said tariffs. Said association is unincorporated and has its residence and principal office at Chicago, Illinois. The Illinois Central Railroad is a member of said association and said railroad company is organized under the laws of Illinois with its residence and principal office at Chicago, Illinois. Chicago, Illinois, is the final destination of a number of shipments which would move under the aforesaid tariffs.

II. Tariffs

The only regulations which were in effect at the time aforesaid tariffs were filed, or by their terms were to become effective, prescribed by the Commission pursuant to its powers under Section 217 (U. S. Code, Sup. 1, Title 49, Sec. 317) or any other Section of the Motor Carrier Act, are contained in its tariff circular No. MC–1, which became effective January 8, 1936, and Supplement No. 1 thereto, effective January 1, 1937. In compliance with the provisions of the Motor Carrier Act and the said regulations of the Commission, W. L. Meyers, as the agent of the Plaintiffs and other carriers, published, filed, and posted in the form and manner, and containing the information prescribed by the aforesaid regulations, certain tariffs naming proportional rates on "all freight" with specified exceptions, in straight or mixed less than truckload shipments, which either immediately preceding or immediately following carriage under such tariffs was or is transported in the original package to Plaintiff's origin station or from Plaintiff's destination station as a part of a truckload or carload consignments under tariffs or schedules lawfully on file with the Interstate Commerce Commission as follows:

7 Tariff of W. L. Meyers, Agent, MF–ICC No. B–138, issued October 26, 1937, and to become effective December 1, 1937, between Chicago, Illinois, and named stations in Wisconsin, along Western Shore of Lake Michigan South of Green Bay, Wisconsin;

Tariff of W. L. Meyers, Agent, MF–ICC No. B–142, between Chicago, Illinois, and stations in Illinois and Indiana, within a radius of 50 miles of Chicago, issued December 11, 1937, to become effective January 15, 1939;

Tariff of W. L. Meyers, Agent, MF–ICC No. B–146, between Evansville, Indianapolis, Fort Wayne, Muncie, and South Bend, Indiana, on the one hand, and named stations in Indiana within the respective trade areas of such cities on the other hand, issued on December 11, 1937, to become effective January 15, 1938. True copies of these tariffs will be made a part hereof and offered at the hearing.

III. Suspension of tariffs

On November 29, 1937, the Commission, upon its own motion and without complaint, petition, or protest of anyone, instituted an investigation concerning the lawfulness of the rates, charges, regulations, and practices stated in said schedules contained in said tariff MF–ICC No. B–138, and further ordered that the operation of all of the schedules contained in said tariff be suspended, until the 1st day of March 1938, or until such further time as might be ordered by the Commission, and on January 14, 1938, on its own motion, without complaint, petition, or protest of anyone, entered its first supplemental order in said Investigation & Suspension Docket No. M–247, suspending the operation of all schedules contained in the tariffs of said Meyers, MF–ICC No. B–142 and MF–ICC No. B–146, respectively, hereto. In said original and in said supplemental order, the Commission referred the matter to an Examiner, A. E. Later, for hearing, and for a recommendation of an appropriate order thereon to be accompanied by reasons therefor.

8 IV. Hearing

At the time and place in the orders, the said Examiner A. E. Later duly held the hearing pursuant thereto. At the said hearing, the Plaintiffs herein appeared as respondents in person and by counsel. The Racine Association of Commerce and the Freight Consolidators and Forwarders Institute intervened and were permitted to intervene in behalf of the respondents and the legality and propriety of the suspended tariffs. No person appeared at said hearing in opposition to, or in protest of, any of said tariffs or any of the schedules therein contained. Evidence in support of the legality and propriety of the tariffs was introduced only by the Plaintiffs and said interveners. A duly certified copy of the record of said proceeding before the Commission, including a complete transcript of all testimony and exhibits, will be offered at the hearing upon this complaint.

Said evidence without contradiction or impeachment showed the following ultimate facts as found, or as should have been found, in the Reports of the Commission hereinafter described:

The principal traffic which will be transported under the suspended tariffs is what is known as "forwarder" traffic. It consists of long haul less-than-carload shipments handled by common carriers similar to express companies, partly as truckload shipments and partly as parts of rail carload shipments. The Forwarders Organization solicits and receives the traffic handled by motor truck to a concentration point where it is consolidated into carload consignments and moved to a break bulk point by railroad. At the break bulk point, it is broken down and the individual less than carload shipments moved by truck to the consignee at ultimate destination. Plaintiffs for a number of years have performed both types of truck service. They have collected shipments and brought them into the concentration point, such as Chicago or Indianapolis, and have dis-
9 tributed shipments over the States of Illinois, Indiana, and Wisconsin brought into the break bulk points by the forwarders. The traffic is in fact the joint traffic of Plaintiffs and the forwarder and represents a joint through movement identical with any joint through movement of two carriers. It is as much the traffic of Plaintiffs as it is that of the forwarders.

Plaintiff's purpose in publishing the tariffs in issue was two fold: (1) To provide uniformity and stability in charges and give them a greater degree of control over the traffic than had formerly existed and (2) to meet the situation created by the decision of the Commission in Acme Fast Freight, Inc., Common Carrier Application, 2 M. C. C. 415, holding that Freight Forwarders such as those to which reference is herein made, were common carriers of property at common law but not subject to the Interstate Commerce Act, and that existing joint through rates and tariffs of Plaintiffs (among other motor carriers) and such forwarders must be cancelled.

Prior to the development of truck transportation, forwarders operated concentration and distribution services only in between a few large urban centers, between which they shipped by railroad carlot quantities of less than carload shipments which they had aggregated. Commencing in 1920, forwarders began using motor carriers to collect and distribute L. C. L. shipments over the market or trade areas surrounding their concentration or distribution centers. This co-ordinated rail carload and truck L. C. L. service increased rapidly so that at present between 55 and 60% of the forwarder's traffic (which amounts to over $100,000,000 per year) originates or terminates by truck at one of the small cities or towns in these "off line" areas.

During the year 1937 Plaintiffs and other motor carriers handled over 128,000 tons of this traffic upon which they earned revenues in excess of $624,000. The total volume of forwarder

10 traffic handled by motor carriers throughout the Chicago marketing area in that year amounted to over 175,000 tons upon which the motor carriers received revenues in excess of $1,780,000. These shipments originated or terminated at thousands of stations over the entire continental United States.

Prior to the effective date of the tariff provisions of the Motor Carrier Act (April 1, 1936) this joint traffic was handled by Plaintiffs under individual contracts. On that date the Forwarders filed tariffs with the Commission naming joint through rates in which tariffs Plaintiffs concurred. Under these tariffs, by agreement, Plaintiffs received for their part of the service a part of the through L. C. L. rate collected from the shipper. The suspended schedules name rates which are identical with these "divisions."

Elaborate and detailed revenue and cost studies of Plaintiffs' operations revealed that the suspended rates produced greater unit revenue to Plaintiffs than any class of traffic, not excluding local L. C. L. traffic, carried by them and much greater than other interline traffic of like kind and which is handled under similar circumstances and conditions, and furthermore produced unit profits, above all costs, of 40% in the case of tariff B-142, 22½% in the case of tariff B-138, and 32% in the case of tariff B-146.

Most of the traffic to which the suspended schedules will apply moves to points in excess of 400 miles beyond the concentration or distribution stations named therein, and for much longer distances than ordinary truck traffic. From an operating standpoint the cost to Plaintiffs of providing service for this traffic is less than any other traffic either local or interline, because one terminal service is eliminated by having the out-bound traffic concentrated and delivered to Plaintiffs into truck loads at the forwarders' in-bound station and the similar delivery by Plaintiffs

11 of in-bound traffic in truck loads at forwarders' out-bound station, and also by the elimination of the cost solicitation, which is borne by forwarder and would be burdensome upon Plaintiffs because of the great distance from their lines. Also because forwarder traffic moves in the direction of Plaintiffs' light loads, it promotes transportation efficiency and economy and produces net profit by enabling Plaintiffs to balance their loads, and thereby enables them to transport local and interline traffic at lower rates than would otherwise be necessary. Forwarder traffic is an indispensable factor in the economical and efficient operation of Plaintiffs' lines.

The suspended charges are all that the traffic can or will bear. The joint through rates of Plaintiffs and forwarders necessarily are and can be no higher than those of competing carriers, rail and motor. Hence, if the suspended proportional rates and pres-

ent joint rates are cancelled forwarders will be compelled to cease service to and from the points located in the market areas of the concentration cities and which are served by Plaintiffs. A detailed cost analysis of Forwarder applications showed with respect to this traffic that the present average through L. C. L. rate was $1.55 per 100 pounds, the amount paid other transportation companies $1.03, the amount paid respondents 24½¢, the forwarders solicitation, terminal and station costs 26½¢, leaving for forwarders profit but one cent, which was totally inadequate to pay any additional rate.

Loss of the traffic would seriously impair the financial stability and carrier service of all Plaintiffs and would ruin several of them.

The so-called proportional rate method is simply a method of publishing as a separate rate, Plaintiffs' charge for the services performed in the through movement of the L. C. L. shipment. The tariffs do not limit the traffic to forwarder traffic, but applies on all traffic moving under like conditions. This
12 proportional rate method has been followed for many years in similar circumstances by all types of carriers and with the approval and authority of the Commission. A large number of such tariffs and Commission decisions were exhibited showing approval of similar tariffs in a number of instances under circumstances identical with or closely similar to those herein.

From a transportation standpoint the method by which Plaintiffs' trucks are coordinated with the rail service into and out of concentration points is the most efficient and serviceable way to handle that traffic and superior both in service and economy to interline all-rail or all-truck movements. It has resulted in a more expeditious, flexible service, better adapted to the particular needs of the shippers than is possible by any other combination. Withdrawal of this coordinated service would be greatly prejudicial to shippers located at the small cities and towns and place them at a great disadvantage in competing with these in the same line of business located at the concentration points.

V. Recommended report of examiner

On August 5, 1938, the said Examiner A. E. Later submitted a recommended report and order recommending that the Commission find that the rates proposed in said tariffs were justified, that the suspension of the said schedules be vacated, and the proceeding discontinued.[1] A true copy of this Recommended Report and Order is appended hereto as Exhibit C.

[1] With the exception of the item embraced in Note 2 on page 8 of the suspended tariff, MF-I. C. C. No. B-138, to which action no exception was taken by Plaintiffs.

VI. Stay of order

No exceptions were filed by anyone to said report and order within the time provided by law, but on the 24th day of August 1938, the Commission, on its own motion, stayed said recommended order pending the further order of the Commission.

13 VII. Report and order of division 5

Thereafter, on December 14, 1938, Division 5 of the Commission, by a majority consisting of Commissioners Lee and Rogers with Commissioner Eastman dissenting, made and entered a report and order in said proceeding overruling the recommendation of the Examiner and finding the rates named in said tariffs to be unlawful, and ordering that the same be canceled and the proceeding discontinued. A true copy of said Report, Order, and Dissenting Opinion is appended hereto as Exhibit B.

VIII. Reconsideration

On December 28, 1938, within the time and in the form and manner prescribed by law and the rules of said Commission, Plaintiffs duly filed with said Commission a petition that the Commission reconsider, reverse, and vacate said report and order of said Division 5.

Thereafter, on the 23rd day of January 1939, the Commission, upon consideration of said petition, reopened said Investigation & Suspension proceeding, Docket M-247 for oral argument, and vacated and set aside the order of December 14, 1938. Thereafter on February 23, 1939, said proceeding was called for argument and duly argued by the parties to the proceeding, including among others, Plaintiffs by counsel herein.

IX. Final report and order

On July 29, 1939, the Commission with Commissioners Eastman and Mahaffie dissenting, and Commissioner Aitchison not participating, entered a final report and order affirming the report of Division 5 and ordering that the schedules and rates contained in said tariffs be canceled and the proceeding discontinued. A true copy of said report and order of the Commission and Dissenting Opinion is appended as Exhibit A hereto.

14 X. Order void

Plaintiffs aver that the aforesaid tariffs were published, filed, and posted in the manner and form required by law, that the rates, rules, regulations, and practices therein established and provided are just, reasonable, and lawful in every respect and do not give or cause any undue or unreasonable preference or advantage to any person, port, gateway, locality, or description of traffic, similarly circumstanced in any respect whatsoever, and were such as the Plaintiffs have the lawful right to make, and that the order of the Commission in ordering cancellation of said schedules and tariffs is arbitrary, capricious, made without any evidence and contrary to the undisputed evidence, and therefore null and void.

XI. Invalid findings

Plaintiffs aver that in the final report and order of the Commission, the Commission arbitrarily, capriciously, and without any evidence, and contrary to the undisputed evidence, made the following invalid findings upon which its conclusions and order were in part based:

1. "That the suspended rates can not be used in combination with the carload rates to arrive at through rates," whereas the undisputed evidence shows the exact contrary.

2. "That the suspended rates were published as a matter of expediency to serve the purpose of certain freight forwarders."

3. "That the proposed rates are materially lower than respondents local rates upon like traffic between the same points," whereas the undisputed evidence was to the exact contrary.

4. "That Record contains no evidence that shippers advocate the maintenance of the suspended rates" in the face of undisputed testimony of 14 responsible shippers to that effect.

5. "That Respondents admittedly handle traffic for some shippers comparable in their respect with the forwarder traffic."

15 XII. Invalid rulings

The aforesaid order of the Commission, Exhibit F, is unlawful and void in that it is arbitrarily and capriciously based upon the following rulings or ultimate conclusions and each of which are erroneous, contrary to the undisputed evidence, without any evidence to support the same, and in violation of law, to wit:

1. That the suspended rates would not be charged the carriers of the property shipped.

2. That suspended rates are not proportional rates.

3. That suspended rates are not similar to proportional rates on water-borne traffic.

4. That proportional rates are not authorized by the Motor Carrier Act.

5. That proportional rates are not proper in connection with two carriers both subject to the Act.

6. That the suspended rates are unlawful because the traffic moves in an L. C. L. movement by Plaintiffs and in a carload movement by rail.

7. That the suspended tariffs "are not what they purport to be."

8. That suspended tariffs are lacking in clarity and definiteness.

9. That suspended rates in so far as they purport to be proportions of through rates in connection with contract rates are unlawful.

10. That suspended rates are not legally proportional rates but mere local rates.

11. That section 216 (d) of Motor Carrier Act includes the provisions of both sections 2 and 3 of Part I of the Interstate Commerce Act.

12. That the conditions and circumstances under which the traffic which would move under the suspended rates are not
16 dissimilar from those under which local traffic moves.

13. That suspended rates constitute a device whereby forwarders will be afforded transportation at rates lower than those charged other shippers under substantially similar circumstances and conditions.

14. That under section 216 (d) rates may be condemned as unlawful in the absence of any showing or injury, prejudice, or disadvantage to anyone.

15. That the suspended tariffs contain inadequate rules for policing enforcement of their provisions.

16. That Plaintiffs would have no way of preventing improper substitution of traffic.

17. That there is no evidence that the owners of the property transported under the suspended rates would obtain any saving in charges.

18. That the suspended rates violate Section 216 (d).

19. That the suspended Rates violate Section 215 (a).

20. That the suspended rates violate Section 217 (c).

XIII. Unlawful refusal to find

Plaintiffs further aver that the Commission in said report and order capriciously, arbitrarily, and unlawfully refused to make

the following findings and conclusions which it was required to make by uncontradicted and unimpeached evidence:

(1) The traffic involved consists of long haul and L. C. L. shipments handled jointly by plaintiffs and certain other common carriers of property at through L. C. L. rates identical with those prescribed by the Commission for all rail transportation between the same points;

(2) Such traffic is large in volume and constitutes a substantial and indispensable part of Plaintiff's total traffic and revenues;

17 (3) The transportation to be rendered by Plaintiffs under the suspended tariffs is part of an indispensable coordinated rail and truck service superior to any other available service;

(4) The method of publication followed in compilation and publication of the suspended tariffs is in accordance with all rules and regulations of the Commission and is lawful, proper, and usual method for the publication of charges upon traffic transported by a carrier from a reforwarding point, reforwarding following a prior haul by another carrier to such reforwarding point, or to a reforwarding point for a subsequent haul by such other carrier from such reforwarding point.

(5) The circumstances and conditions which attend the movement of the traffic to which the suspended rates would apply are essentially different from the circumstances and conditions which altered the movement of local traffic by plaintiffs between the same points, in the following, among other, particulars:

(a) The commercial and competitive conditions of the two traffics are wholly dissimilar;

(b) The transportation service required for and accorded the traffic involved is substantially less than that required for and accorded to local traffic;

(c) The cost to plaintiffs of providing transportation for the traffic involved is substantially less than that of local traffic.

(6) The suspended charges are fully compensatory and highly remunerative to Plaintiffs and more so than any other traffic handled by them;

(7) Cancellation of the suspended tariffs will result in the loss of the traffic by Plaintiffs since such charges are all that the traffic will bear;

18 (8) Loss of the traffic which the suspended tariffs are designed to retain would deprive Plaintiffs of over $600,000 in revenue per year, impair the operations of all of them, and bankrupt several of them.

XIV. Plaintiffs' injury

The traffic which the suspended rates were published by the Plaintiffs to retain, constitutes a large proportion of the entire traffic and business of the Plaintiffs and should such traffic be lost, which result would follow the cancellation of the suspended rates as directed in the order of the Commission, would cause an annual loss in revenue to Plaintiffs of over $600,000 per year and in the case of all of the Plaintiffs, would severely and irreparably injure and impair their service, and in the case of some of them would result in insolvency and bankruptcy. Plaintiffs therefore aver and charge that said unlawful and void order will irreparably injure them and destroy their respective business in whole or in part.

XV. Prayer

Wherefore, Plaintiffs herein respectfully pray:

(1) That the Court, as soon as practical after the filing of this Complaint, shall call to its assistance in the hearing and determination thereof, two other judges, one of whom shall be a Circuit Judge.

(2) That process issue against the defendant, the United States of America, as provided by law.

(3) That a temporary or interlocutory injunction be entered herein restraining, enjoining, and suspending until further order of this Court, the operation, execution, effect, and enforcement of said report and order of the Commission.

(4) That upon final hearing of this Court, shall adjudge such order of the Commission as null and void and set aside, suspend and annul the same and its enforcement, and that the
19 defendant be perpetually restrained from taking any steps, or instituting, or further presenting any proceeding to enforce said order.

(5) For such other and further relief as plaintiffs may be entitled to in the premises.

JOHN R. TURNEY.
John R. Turney,
Solicitor for Plaintiffs.
Office & Post Office Address, 1001 Fifteenth St. NW.,
Washington, D. C.

WASHINGTON, D. C., *September 2, 1939.*

FREDERICK E. STOUT.
Room 1143, 209 S. La Salle St.,
Chicago, Illinois. Phone Central 0314,
Local Counsel.

20 [Duly sworn to by John R. Turney; jurat omitted in printing.]

21 *Exhibit A to Complaint*

Interstate Commerce Commission
Investigation and Suspension Docket No. M-247. Proportional Rates Between Chicago and Wisconsin Points

Submitted February 23, 1939. Decided July 29, 1939

Upon reconsideration, proposed quantity, truckload, and less-than-truckload proportional rates on all freight between Chicago, Ill., and certain points in Wisconsin, and less-than-truckload proportional rates on like traffic between Chicago and certain points in Illinois and Indiana, and between Evansville, Indianapolis, Fort Wayne, Muncie, and South Bend, and certain other points in Indiana found unlawful. Finding in prior report, 10 M. C. C. 556, affirmed. Schedules ordered canceled and proceeding discontinued.

Earl Girard, Ferdinand Born, Eugene L. Cohn, P. E. Johnson, J. E. Hansen, and P. E. Mogensen for respondents.

J. R. Turney, Robert E. Quirk, F. J. Knaack, A. F. Bowman, R. B. Hall, Emanuel Paulsen, H. J. Bowman, Chas. E. Cotterill, Amos M. Mathews, and Edgar Watkins, Jr., for interveners.

REPORT OF THE COMMISSION ON RECONSIDERATION

By the COMMISSION:

In the prior report herein, 10 M. C. C. 556, division 5 found that proposed quantity, truckload, and less-than-truckload proportional rates of respondents herein, common carriers by motor vehicle, published to apply on all freight, except certain specified commodities, between Chicago, Ill., and certain points in Wisconsin, and less-than-truckload proportional rates on like traffic between Chicago and certain points in Illinois, and Indiana, and between Evansville, Indianapolis, Fort Wayne, Muncie, and South Bend and certain other points in Indiana would be unlawful, and ordered their cancellation.

Upon petition of respondents and intervener Freight Consolidators and Forwarders Institute, the proceeding was reopened for oral argument and reconsideration, and the order of di-
22 vision 5 was vacated and set aside. Thereupon the Middle Atlantic States Motor Carrier Conference, Inc., Southern Motor Carriers Rate Conference, and the Class I rail carriers of the western district intervened in opposition to the proposed rates.

The parties have been heard in oral argument. Operation of the proposed rates has been voluntarily deferred by respondents. The facts set out in the prior report will be repeated herein only to the extent necessary to make this report understandable.

The petition and argument are directed to the finding of unlawfulness in the prior report of the less-than-truckload rates. These rates are published to apply on all freight, with specified exceptions, in the original package, in less-than-truckload quantities, moved by respondents from one or the other of the points hereinbefore named, designated in the tariffs as "reforwarding" points, to which it has been transported as part of a carload or truckload shipment, under tariffs or schedules lawfully on file with us, to certain destinations in one or more of the States hereinbefore named. They are published to apply also on like traffic, in less-than-truckload quantities, moved by respondents in the reverse direction from the last-described points to one or the other of the reforwarding points for transportation thence as part of a carload or truckload shipment, under tariffs or schedules lawfully on file with us. Respondents propose to allow 48 hours at the reforwarding points within which shipments to be reforwarded must be tendered to the carriers performing the outbound movement from such reforwarding points. Inferentially, taking of delivery by the consignee at the reforwarding point and rebilling within a period of 48 hours thus would be authorized. The only policing regulations provided are instructions that,
23 when the proportional rates are to apply on outbound movements from the reforwarding points, the outbound billing must show reference to the carrier's bill of lading or manifest under which the shipment reached the reforwarding point as part of a truckload or carload consignment, and, when the proportional rates are applied on inbound movements to the reforwarding points, the inbound billing must show reference to the ultimate destination to which it is intended to reship the property.

These rates, except in so far as they may be used by a very few large shippers, none of whom, other than the freight forwarders, appeared in support thereof, are not the rates which would be charged the owners of the property shipped, but the rates which would be charged certain freight forwarders. They are substantially the equivalent of divisions of so-called joint rates of certain freight forwarders and these respondents which the freight forwarders have on file with us. In Freight Forwarding Investigation, 229 I. C. C. 201, we found that freight forwarders are not express companies under Part I of the interstate commerce act. In Acme Fast Freight, Inc., Common Carrier Application, 8 M. C. C. 214, we found that freight

forwarders are neither common nor contract carriers under Part II of the act, and that they can not lawfully participate in joint rates with common carriers by motor vehicle. In supplemental report in the last-cited case, decided July 24, 1939, we found that the tariffs of freight forwarders applicants therein are not in consonance with section 217 (a) of Part II of the act and with our regulations thereunder, that such tariffs are improperly on file with us, that they are void and their use is unlawful, and that they should be rejected and stricken from our files effective October 10, 1939.

These rates are published by respondents as proportional
24 rates, but admittedly they are not proportions of, parts of, or remainders of through less-than-truckload rates or of less-than-carload rates subject to the interstate commerce act at which a less-than-truckload shipment could be consigned under a through bill of lading from point of origin to final destination. Published, as they are, for application on all freight, except certain specified commodities, which will have moved as a part of a truckload or a carload shipment to the reforwarding points or which will move from such points as a part of a truckload or a carload shipment under tariffs or schedules lawfully on file with us, these rates, as counsel for respondents conceded upon oral argument, as a practical matter can not be used in combination with the published truckload or carload rates to arrive at through rates. Nor can they be used in combination with the less-than-truckload rates of these or other motor common carriers or the less-than-carload rates of common carriers by railroad to arrive at through less-than-truckload rates, although the unit of shipment which the owner of property would tender for transportation on the proposed rates would be a less-than-truckload shipment. Stripped of protective coloring, these rates are published as proportional rates primarily as a matter of expediency to serve the purpose of certain freight forwarders and to perpetuate in another form so-called divisions of purported joint rates of the freight forwarders. As hereinbefore explained, we have ordered stricken from our files the tariffs of certain of these freight forwarders.

We have found that a proportional rate is one which applies to a part of a through transportation which is entirely within the jurisdiction of the interstate commerce act, and that it means a part of, or the remainder of, a through rate, or it means nothing at all. Clearly, the proposed rates do not come within this definition of a proportional rate.

25 These proposed rates derive no validity from such analogy as they may be thought to bear to proportional

rates by rail to and from the ports which differ from the corresponding local rates and which apply on traffic brought to or carried from the ports by common carriers by water, or to so-called proportional rates or rates in the nature of proportional rates published by certain rail carriers for application on traffic received from or delivered to contract carriers by water. In section 6 (13) (c) of Part I of the act the publication of proportional rates by rail to or from the ports which differ from the corresponding local rates, and which apply on traffic that has been brought to the port or is carried from the port by a common carrier by water, is specifically authorized. Part II of the act contains no similar authorization, either expressed or implied, for the publication of proportional rates, such as these, in connection with the truck-load rates of common or contract carriers subject to Part II or the carload rates of common carriers by railroad subject to Part I. All the carriers, including respondents, which would participate in the through transportation contemplated by respondents' tariffs are subject either to Part I or Part II of the act, and are therefore, amenable to the provisions of those parts governing the publication of rates and to regulations which we have promulgated thereunder. Consequently, the reports, including the report in Tariffs Embracing Motor Truck or Wagon Transfer Service, 91 I. C. C. 539, cited by respondents, in which we have recognized the legality of so-called proportional rates or rates in the nature of proportional rates published by certain rail carriers for application on traffic received from or delivered to carriers not subject to the act, including contract carriers by water, are not in point.

Where, as here, both the carri into and out of the re-
26 forwarding points are subject to the interstate commerce act, we have in no case given our approval to proportional rates lower than local rates, except when the hauls for which the proportional rates apply are parts of through movements of like units of shipment from primary origins to ultimate destinations.

The proposed rates are entirely dissimilar from the rates considered in Cotton From and To Points in Southwest and Memphis, 208 I. C. C. 677, also cited by respondents. In that case the less-than-carload and carload rates on cotton were authorized under definite transit rules which permitted the cotton to be shipped in less-than-carload lots to specified assembling or concentration points, there assembled into carloads and reshipped thence to destination. The less-than-carload rates were charged to the assembling or concentration points, and, after the transportation in carloads from such points was completed, the through carload rates were protected on each bale of cotton from

point of original shipment to point of ultimate destination. The application of the rates here proposed would not be governed by any similar transit rules, nor is there any showing that the nature of the traffic here considered is comparable to cotton traffic in that transit is essential or appropriate to its orderly transportation and marketing.

The arrangement here, under which the freight forwarder takes possession of the property transported at the reforwarding points, differs in a number of important respects from transit as defined by us and by the courts. Under true transit there is the movement of a like unit of a particular commodity or its equivalent over a through route at a through rate from point of original shipment to point of ultimate destination.
27 Transit arrangements rest upon the fiction that the incoming and outgoing transportation services, which are in fact distinct, constitute a continuous shipment of the identical article from point of origin to final destination. North Packing & Provision Co. v. Director General, 104 I. C. C. 607; Central R. R. Co. v. United States, 257 U. S. 247. The proposed less-than-truckload rates as a practical matter can not be used, as previously explained, in combination with the published truckload or carload rates of the carriers which would actually perform the transportation to and from the reforwarding points to arrive at through rates, or in combination with other less-than-truckload rates or with less-than-carload rates to produce through less-than-truckload rates. For the foregoing reasons authorization of transit in connection with the proposed arrangement would constitute a perversion of transit.

By section 217 (a) of Part II of the act tariffs showing the rates and charges of common carriers by motor vehicle subject thereto are required to be published in such manner and to contain such information as we by regulations shall prescribe. By section 217 (c) tariffs of common carriers by motor vehicle are required to plainly state the changes in rates, rules, regulations, or practices proposed to be made. We have prescribed regulations pursuant to that authority under which all rates of common carriers by motor vehicle subject to Part II must be explicitly stated. For the reasons hereinbefore set forth, the tariffs naming the proposed rates are not what they purport to be, are lacking in clarity and definiteness, and, therefore, contravene that section.

The proposed rates are published to apply in connection with truckload consignment transported under schedules on file with us, in other words, under schedules of motor contract carriers. Respondents herein are common carriers. There is no provision, either expressed or implied, in Part II of the

28 act for either joint rates or arrangements for the through carriage of property between common and contract carriers. In Acme Fast Freight, Inc., Common Carrier Application, supra, we found that while Part II does not specifically prohibit joint rates or arrangements for through carriage between such carriers, the fact that it expressly makes provision for through routes and joint rates only between common carriers has the force and effect of prohibiting through routes and joint rates or arrangements for carriage between common and contract carriers. Division 5 has found that common carriers and contract carriers are essentially different in character and in their relation to the shipper, and that the difference is such that they cannot join with each other in arrangements for through transportation involving a single transaction with the shipper. Holmes Contract Carrier Application, 8 M. C. C. 391. The proposed rates, insofar as they purport to be proportions of through rates for application in connection with contract rates, are inconsistent with respondents' status as common carriers.

The proposed rates are materially lower than respondents' local rates on like traffic between the same points, although they are not legally proportional rates and therefore have no different standing under the act than the local rates.

Section (d) of Part II of the act prohibits unjust discrimination between persons by common carriers by motor vehicle. Division 5 has found that the purpose of section 216 (d) in that respect is similar to that of section 2 of Part I of the act, that is, to insure equality of rates as to all and to prevent favoritism. The Division further found that in applying section 216 (d), weight must be accorded the precedents established by the courts and by us in proceedings which arose under sec-

29 tion 2. Arrangements—Arrow Carrier Corp. and Duplan Silk Corp., 4 M. C. C. 657, 677. The proposed rates, ostensibly are open to the public, but the record contains no evidence that shippers advocate the maintenance of these rates, except insofar as they may serve the purpose of the forwarders. In practical effect these rates can be used by few, if any, shippers, except the forwarders.

Respondents assert that the differences between the proposed rates and the local rates are justified by differences in the nature and extent of the service performed in connection with traffic which would move on these rates and that performed in connection with traffic which moves on the local rates. These differences are stated to be the smaller number of stops necessary in the congested Chicago area, for example, in connection with forwarder traffic than in connection with other traffic, and the expense to respondents for the solicitation of local traffic which

they do not have in respect of forwarder traffic. Respondents employ their road-haul trucks for pick-up and delivery service in connection with forwarder traffic, but for other traffic generally which they handle at the reforwarding points named in these tariffs they use either separate trucks for that purpose or employ the services of local truckers. Generally, the size of the shipments which respondents transport for the forwarders to and from the reforwarding points are larger than those transported for other shippers to and from such points, and the number of stops at such points in connection with forwarder traffic are fewer than those made in connection with other traffic; but this is not invariably the case. Respondents admittedly handle traffic for some shippers which is comparable in these respects with the traffic which they handle for the forwarders. Furthermore, these proposed rates and respondents' local less-than-truckload rates between these points being published for application on the same unit of shipment, namely, a less than truckload, the fact that the forwarders furnish a greater volume of traffic generally than do individual shippers does not justify lower rates in favor of the forwarders. The use by respondents of different methods of handling traffic for the forwarders than for others does not relieve respondents from compliance with section 216 (d). In other words, dissimilarity of conditions which respondents may choose to make by employing different methods of handling like kinds of traffic does not justify dissimilarity in rates. So far as the proposed rates are available to shippers other than forwarders there is no evidence that respondents would be relieved of any expense for solicitation. The existence of a competitive relationship between shippers is not essential to a finding of unjust discrimination. Forwarders are persons within the meaning of section 2 of Part I, and, for like reasons, under section 216 (d) of Part II of the act. See Interstate Commerce Commission v. Delaware, L. & W. R. R. Co., 220 U. S. 235. Whether the forwarders in their relation to these respondents be regarded as having the status of shippers, or whether they be considered the agent of the shippers for whom they obtain or arrange transportation, it seems clear that these proposed rates constitute a device whereby the forwarders in either capacity, and possibly a very few large shippers who can avail themselves of these rates, will be afforded transportation at rates lower than the rates which will be charged certain other shippers under substantially similar circumstances and conditions, in violation of section 216 (d).

Apart from the fact that the proposed rates would violate Part II of the act in the respects hereinbefore stated, the tariffs naming these rates contain no adequate policing rules for

31 insuring that property shipped under these rates has in fact been transported or is to be transported as part of a carload or truckload shipment. Freight forwarders arrange for the transportation not only of freight coming from beyond or going beyond the reforwarding points but of large quantities of freight originating at or destined to such reforwarding points. There is no evidence that respondents would have any way of enforcing provisions against substitution of property originating at or destined to the reforwarding points even if such provisions were incorporated in the tariffs.

Finally, there is no evidence in this record that the owners of property transported under the proposed rates would obtain any saving in transportation charges. The owners of such property would be charged the rates of the forwarders on less-than-carload or less-than-truckload shipments between the points of original shipment and points of ultimate destination of the traffic, and these rates generally do not differ from the corresponding rates of the rail carriers. In this connection, also, we have not overlooked the testimony which they submitted to the effect that they obtain much more expeditious service by employing the forwarders, for which these rates are chiefly proposed, than they would if they tendered their shipments directly to either the railroads or motor carriers, and that they are opposed to any action which would operate to deprive them of such service. We have no desire to deprive these shippers of the expeditious service which they are now receiving on traffic which would be handled at the proposed rates, but, upon the facts shown, we have no alternative except to find that the proposed rates would violate the sections of the act hereinbefore mentioned. Obviously, our action can not be determined by considerations of mere expediency and utility.

32 We find that the proposed less-than-truckload rates would be unlawful in that they would violate sections 216 (d), 217 (a), and 217 (c) of Part II of the act.

The finding in the prior report that the so-called quantity and truckload proportional rates would be unlawful was not questioned by the parties, and, no sufficient reason otherwise appearing for its modification, we affirm that finding.

An order will be entered requiring cancellation of the proposed rates and discontinuing this proceeding.

CASKIE, Commissioner, concurring:

I am fully in accord with this report. However, there is one point which I would develop somewhat more at length than is done therein.

During the formulation, pursuant to the authority vested in it by section 217 (a) of Part II of the Interstate Commerce Act, of

regulations governing the form and manner of publication of tariffs of motor common carriers, the Commission solicited and, where practicable, accepted the advice and assistance of the carriers affected, as well as of numerous shippers. Having determined upon and prescribed such regulations, however, there is obviously no occasion for notice and hearing on the question of whether particular tariff schedules tendered for filing conform therewith. In other words, the duty of administering its tariff regulations in the public interest is one which devolves entirely on the Commission. The proposed rates are so patently a subterfuge and so completely at variance with the Commission's tariff regulations that I have no difficulty whatever in concluding, as do the majority, that these rates would violate paragraphs (a) and (b) of section 217 of Part II. The tariffs naming these rates
33 might properly have been rejected by the Commission in the public interest without the formality of any notice or hearing. The absence of shipper opposition to the proposed rates, stressed by the minority, therefore, is of no significance.

EASTMAN, Chairman, dissenting:

The rates here in issue were suspended upon the Commission's own motion in the absence of any protests or requests for suspension. At the hearing no one appeared in opposition. While no burden rested on respondents to justify the rates, they presented much evidence in support, as did intervening forwarding companies and shippers. The examiner who heard the evidence recommended that the rates be found not unlawful, except in minor respects. His report was given full publicity. No exceptions were filed, and no one, shipper or carrier, asked permission to intervene for the purpose of seeking a further hearing. Nevertheless, division 5 stayed the order, and in the prior report a majority found that the suspended rates would be unlawful. Thereafter, upon petition of respondents and the intervening forwarders, the proceeding was reopened for argument before the Commission. At the argument, opposition to the suspended rates, apart from opposition within the Commission, developed for the first time. It was voiced, not by shippers, but by two groups of motor carriers and one group of railroads, which intervened after the reopening but without seeking further hearing.

The question is whether the record does or does not warrant a finding that the suspended rates would in any way be unlawful. The evidence stands unchallenged and uncontradicted. While it was presented wholly by proponents, no one, as has been indicated, has sought to present any other evidence,

34 The finding that the so-called quantity and truckload rates which are included in the proposed schedules would be unlawful, which no one has contested, may be accepted. The important question concerns the proposed less-than-truckload rates. As to these, the majority now find that they "would be unlawful in that they would violate sections 216 (d), 217 (a), and 217 (c) of Part II of the act."

It will be noted that while the prior report said that the "most serious question raised in this proceeding is whether the proposed rates will be reasonably compensatory" and implied a negative answer, this question is not discussed in the present report. It contains no finding, express or implied, that the rates would be unreasonable. This is as it should be, for the evidence, based on detailed and unchallenged cost studies, is that the traffic which would move on these rates would be profitable to respondents, and in fact substantially more profitable than much of their other traffic, particularly their interline traffic with other motor carriers.

Would the suspended rates violate section 216 (d)? That provision of Part II reads as follows:

"It shall be unlawful for any common carrier by motor vehicle engaged in interstate or foreign commerce to make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, gateway, locality, or description of traffic in any respect whatsoever, or to subject any particular person, port, gateway, locality, or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discriminations, prejudice, or disadvantage to the traffic of any other carrier of whatever description."

It will be noted that in its wording this provision is similar to section 3 (1) of Part I. The majority, however, do
35 not make any finding of undue preference or prejudice; and this also is as it should be, for there is an entire absence of evidence to support any such finding.

It is true that the suspended rates differ from the local rates on like traffic between the same points.[2] However, the suspended rates apply on movements between these points only when such movement is preceded or followed by transportation of the shipment in a truckload or carload consignment from or to a point beyond. The shipments on which they would be charged would, therefore, have primary origin or final destination at the points

[2] The majority state that they are "materially lower" than the local rates. This is true only in part. They are lower than some, but by no means all, of the corresponding local rates.

beyond and could in no way be in competition with local shipments. The record is devoid of any complaints from shippers and contains nothing whatever in the way of proof or even allegation that the suspended rates would result in injury or prejudice or disadvantage to any one. There was much evidence from shippers, both large and small, but it was all in favor of the suspended rates.

There being no basis for a finding of undue preference or prejudice, the majority rely upon a broad construction of section 216 (d). They say it must be construed as prohibiting, also, what is defined as "unjust discrimination" in section 2 of Part I, and they point out that the "existence of a competitive relationship between shippers is not essential to a finding of unjust discrimination," which avoids the difficulty that there is here no evidence of injury or disadvantage to any one. I shall not quarrel with this broad interpretation of section 216 (d). Whether or not it is
36 sound is here immaterial, for if section 2 had been incorporated word for word in Part II, the basis of record for a finding of unjust discrimination would still be lacking.

The prohibition in section 2 is, in substance, against charging a greater or less compensation for any service rendered than is charged for a "like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions." The record here is definite and clear that the circumstances and conditions which attend the movement of the traffic to which the suspended rates would apply are essentially different from the circumstances and conditions which attend the movement of strictly local traffic between the same points.

In a very early case, New York Board of Trade and Transportation v. Pennsylvania R. Co., 4 I. C. C. 447, the Commission undertook, under section 2, to compel certain railroads to desist from charging less on import traffic from ports to inland destinations than on like domestic traffic from and to the same points. There was no evidence of any difference in the costs of service. The Supreme Court in Texas & P. Ry. Co. v. Interstate Commerce Commission, 162 U. S. 197, reversed this action, on the ground that the circumstances and conditions, more particularly the commercial and competitive conditions, surrounding the two forms of traffic were dissimilar. Here, likewise, it is shown that there is no similarity in the commercial and competitive conditions which affect the traffic to which the suspended rates would apply and those which affect local traffic between the same points. This is because the suspended rates, unlike the local rates but like the import rates in the case above cited, apply to a movement

37 which is in reality only part of a through movement to or from points beyond. But here the record contains in addition, unlike the case above cited, evidence which demonstrates that there is also a dissimilarity in costs of service.

Because of the requirement that a movement beyond in carload or truckload quantities must precede or follow the movement to which the suspended rates would apply, respondents would either deliver or receive the latter traffic at the point of interchange in truckload quantities, although it might be, and ordinarily would be, picked up or delivered at the other end of the haul in consecutive small lots. It would thus be what one witness called a "semi-truckload" movement. In other words, it would be a movement having at one end of the haul the characteristics of a concentrated truckload movement, including low unit terminal expense, but fanning out at the other end into a less-than-truckload movement with the high unit terminal expense characteristic of the scattered receipt or delivery of a number of separate small shipments. In contrast, local less-than-truckload movements characteristically have no such concentration at one end of the haul.

The considerable saving in expense resulting from the difference in conditions under which the traffic in issue would be handled, as compared with like local traffic between the same points, is established of record by detailed and uncontradicted evidence. Other lesser savings in expense, resulting from other causes, are shown. The majority, as I read their report, do not go so far as to deny that there would in general be such a saving, but they argue that it is entitled to no consideration, for two reasons:

38 (1) They say that respondents admit that some local shipments may be handled as cheaply as shipments to which the suspended rates would apply. While I am not aware of such an admission, the point is immaterial. Differences in conditions surrounding definite classes of traffic are plainly to be judged by their generally prevailing characteristics, not by sporadic exceptions.

(2) They say that "dissimilarity of conditions which respondents may choose to make by employing different methods of handling like kinds of traffic does not justify dissimilarity in rates." The record shows that the methods of handling differ, not because of any arbitrary choice by respondents, but because the methods fit, in each instance, the essentially different conditions which are encountered.

It is clear, therefore, that the record in no way supports a finding that the suspended rates would violate section 216 (d), however that paragraph be construed.

Would the suspended rates violate section 217 (a) or section 217 (c)? The first of these two provisions requires motor common carriers to print and keep open to public inspection tariffs showing their rates, fares, and charges, and authorizes the Commission to prescribe the form and manner in which such tariffs shall be published and the information which they shall contain. The second prohibits any change in such tariffs except after 30 days' notice, unless the Commission shall otherwise order. The majority say that the suspended rates would violate these provisions because the tariffs which name them are "not what they purport to be" and are "lacking in clarity and definiteness."

My dissent to the prior report contained this statement:

39 "The tariffs containing the suspended rates are subject to criticism in that the governing rules may not be sufficiently definite to insure application of the rates to traffic which meets the intended requirements and to no other traffic, especially in view of the 48-hour period during which the through movement may be interrupted at the reforwarding point. Provisions in such rules which permit of adequate policing are a necessity. However, this is a defect which may readily be remedied."

To this statement I adhere. With the exception of this one possible defect, which is capable of easy correction, the tariffs are entirely definite and clear.

The allegation of the majority that the tariffs are "not what they purport to be" apparently rests, as nearly as I can determine, on the proposition that the suspended rates are termed "proportional" rates, but do not come within a correct definition of such rates or, at all events, are not the kind of proportional rates which the act authorizes. Even if it be assumed that respondents thus erred in their terminology, it is significant that the majority could suggest no provision of the act which is violated by such an error except provisions relating to the publication of tariffs or changes therein.

A simple and well-established principle of law, to which I have already adverted, furnishes the answer to these technical contentions. It is that rates on traffic between any two points may lawfully differ from other rates on like traffic between the same points where there is a dissimilarity in circumstances and conditions. As the Supreme Court said in Interstate Commerce Commission v. Baltimore & O. R. Co., 145 U. S. 263, 283-4, it is clear that under the act common carriers

"are only bound to give the same treatment to all persons alike under the same conditions and circumstances, and that any fact which produces an inequality of conditions and a change of circumstances justifies an inequality of charge."

40 In that case it was held, among other things, that a passenger may lawfully be charged less between two points on a round-trip ticket than on a single-trip ticket. Where a difference in circumstances and conditions has been shown, as it has clearly been shown here, a difference in rates is lawful. Possibly we could, under our authority to prescribe regulations governing the publication of tariffs, establish rules for the designation of rates, but no such rules could lawfully preclude differences in rates based on differences in circumstances and conditions. The suspended rates are justified by that principle of the law, and whether they are rightly or wrongly termed "proportional" rates is wholly immaterial. If this designation violates any of our rules, which in fact it does not, the remedy for such a violation is a mere change in the designation and not the final cancelation of the rates.

The discussion in the majority report with respect to proportional rates is, however, open to criticism. With one exception, mentioned below, the act contains no definition of such rates. By the general usage of many years, however, the term is used to identify rates which apply to what is in reality a part of a through haul and hence are limited to traffic which has received a prior haul or is to receive a subsequent haul by a connecting carrier. The suspended rates come within such a definition. The majority state that we have found "that a proportional rate is one which applies to a part of a through transportation which is entirely within the jurisdiction of the interstate commerce act," but this is plainly incorrect, as is shown by their own reference to Tariffs Embracing Motor Truck or Wagon Transfer Service, 91 I. C. C. 539, and as is also shown by Lumber from San Francisco Bay Points, 78 I. C. C. 760, and other cases which could be cited.

41 Section 6 (13) (c) does contain the following definition:

"By proportion rates are meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water."

Section 6 (13) (c), however, was originally enacted in the Panama Canal Act of 1912, and it is clear that this definition was for the particular purposes of that paragraph, which, in order that there might be no doubt in regard to the matter, authorizes the Commission to prescribe "proportional rates by rail to and from the ports to which the traffic is brought, or from which it is taken by the water carrier."

The majority stress the fact that Part II "contains no similar authorization, either expressed or implied, for the publication of

proportional rates, such as these, in connection with the truckload rates of common or contract carriers subject to Part II or the carload rates of common carriers by railroad subject to Part I." It is equally true that Part I contains no similar authorization in connection with traffic whose movement beyond the point of interchange is by other than common carriers by water. Yet the Commission has consistently recognized, approved, and prescribed, both before and since the passage of the Panama Canal Act, rates which it called proportional rates, or said were "in the nature of proportional rates," where the movement beyond was by railroad or even by contract or private carrier by water. The cases involving lake-cargo, ex-lake, and ex-river rates of the latter character are too well known to require citation.

Finally, in their discussion of this matter, the majority have this to say:

"Where, as here, both the carriers into and out of the reforwarding points are subject to the interstate commerce act, we have in no case given our approval to proportional rates lower
42 than local rates, except when the hauls for which the proportional rates apply are parts of through movements of like units of traffic from primary origins to ultimate destinations."

It will be noted that it is not denied that we have prescribed proportional rates where the movement beyond the interchange point was not of like units of traffic but was by carriers not subject to our jurisdiction, as in the case of the lake-cargo and ex-lake rates, where the movement by rail is in carloads and the movement beyond is in boatloads. Nor is any case cited in which we have heretofore refused to approve proportional rates where the movement beyond was of an unlike unit of traffic but by a carrier subject to our jurisdiction. Nor is there reference to any provision of law which prohibits proportional rates in such circumstances. It is conceded, however, that in Cotton From and To Points in Southwest and Memphis, 208 I. C. C. 877, we approved the application of through carload rates to shipments which actually move into the interchange point in less-than-carload lots and move beyond in carloads. Plainly the application of through carload rates to combination movements of this character is a greater anomaly than could possibly be created by the application to the less-than-carload portions of the movement of less-than-carload proportional rates.

Summing up this phase of the majority's findings, it is clear that the suspended rates would not violate section 217 (a) or section 217 (c), with the possible exception of one minor defect which can readily be corrected, and that the remedy for any such

deviation is such a correction and not a cancelation of the rates in finality.

The findings in their entirety are, therefore, with the minor exceptions above noted, without support of either law or fact.

I am authorized to say that Commissioner MAHAFFIE joins in this expression of dissent.

Commissioner AITCHISON did not participate in the disposition of this proceeding.

43 ORDER

At a general session of the Interstate Commerce Commission held at its office at Washington, D. C., on the 29th day of July 1939

Investigation and Suspension Docket No. M-247

Proportional Rates Between Chicago and Wisconsin Points

It appearing, That by orders dated November 29, 1937, and January 14, 1938, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices set out in the schedules enumerated and described in said orders, and suspended the operation of said schedules until March 1, 1938, and by order dated February 21, 1938, further suspended the operation of said schedules until May 30, 1938; and that operation of said schedules has been voluntarily deferred by respondents until September 1, 1939.

It further appearing, That a full investigation of the matters and things involved has been made and that the Commission on the date hereof has made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the respondents herein be, and they are hereby notified and required to cancel said schedules on or before October 10, 1939, by filing and posting in the manner prescribed in the motor carrier act of 1935, upon not less than one day's notice to this Commission and to the general public, and that this proceeding be discontinued.

By the Commission.

[SEAL] W. P. BARTEL, *Secretary.*

A true copy.

W. P. BARTEL,

Secretary of the Interstate Commerce Commission.

44 *Exhibit B to complaint*

Interstate Commerce Commission

Investigation and Suspension Docket No. M-247.

Proportional rates between Chicago and Wisconsin points

45 Submitted August 24, 1938. Decided December 14, 1938

Proposed truckload and less-than-truckload proportional rates on all freight between Chicago, Ill., and points in Wisconsin, between Chicago, Ill., and certain points in Illinois and Indiana, and between Evansville, Indianapolis, Fort Wayne, Muncie, and South Bend, on the one hand, and other Indiana points, on the other, found unlawful. Schedules ordered canceled and proceeding discontinued.

Earl Girard, Ferdinand Born, Eugene L. Cohn, P. E. Johnson, J. E. Hansen, and P. E. Mogensen for respondents.

J. R. Turney, Robert E. Quirk, F. J. Knaack, A. F. Bowman, R. B. Hall, Emanuel Paulsen, and H. J. Bowman for interveners.

REPORT OF THE COMMISSION

Division 5, Commissioners Eastman, Lee, and Rogers

By DIVISION 5:

No exceptions were filed to the report and order recommended by the examiner, but we stayed the order. Our conclusions differ from those recommended.

By tariffs [3] filed to become effective on December 1, 1937, and January 15, 1938, respondents proposed to establish truckload and less-than-truckload proportional rates to apply on all freight, except certain specified commodities, between Chicago, Ill., and certain stations in Wisconsin, between Chicago, Ill., and certain stations in Illinois and Indiana, and between Evansville, Indianapolis, Fort Wayne, Muncie, and South Bend, on the one hand, and various other stations in Indiana, on the other. These proportional rates are published to apply on traffic transported from the named stations on traffic which has arrived at such stations as a part of a truckload or carload consignment, for movement beyond over the lines of respondents in less-than-truckload or truckload quantities; or on less-than-truckload or

[3] Agent W. L. Meyers' MF-I. C. C. No. B-138, MF-I. C. C. No. B-142 and MF-I. C. C. No. B-146.

truckload shipments of freight which move to the named points over respondents' lines; for movement beyond, as a part of a truckload or carload consignment.

46 The tariffs provide that a period of not more than 48 hours will be allowed at any "reforwarding point" named in the tariffs, which are the points named above from or to which the proportional rates are published to apply. Within this time limit, shipments to be reforwarded under the provisions of the tariff must be tendered to the carrier performing the outbound movement from such reforwarding point. This by inference authorizes the taking of delivery by the consignee at the reforwarding point and rebilling within a period of 48 hours. The only policing regulations provided are instructions that, when the proportional rates are to apply on outbound movements from the reforwarding points, the outbound billing must show reference to the carrier's bill of lading or manifest under which the shipment reached the reforwarding point as part of a truckload or carload consignment, and, when the proportional rates are applied on inbound movements to the reforwarding points, the inbound billing must show reference to the ultimate destination to which it is intended to reship the property.

The proposed rates would apply generally on less-than-truckload quantities, subject to a minimum charge varying from 25 to 50 cents, but lower rates on quantities of 10,000 pounds and 20,000 pounds are also provided on all freight between some, but not all, of the Wisconsin points and Chicago. These quantity rates would apply on shipments delivered to a single carrier in one day for loading on one vehicle, consigned to one consignee for one delivery, and the tariff item provides that the shipments may be "from various shippers." These quantity rates would also apply on shipments "from one point picked up at one time in one day for loading on one vehicle for delivery to various consignees." One of the tariffs also provides between Chicago and Milwaukee, Wis., a rate on truckload movements of $25 per vehicle of designated size for loading not to exceed 20,000 pounds, which is applicable on traffic originating or destined beyond in truckload or carload movement. It is also provided, however, that this charge will apply on "all freight," except as noted therein, which has been concentrated at one loading platform for transportation between Chicago and Milwaukee. This provision does not require that the freight shall have undergone a previous movement, but is applicable only on consignments included in the same vehicle with shipments originating or destined beyond.

On our own motion the tariffs were suspended in their entirety until March 1, 1938, and resuspended until May 30, 1938, and they

have subsequently been voluntarily postponed until February 1, 1939. The matter was assigned to an examiner and a hearing was had. Freight Consolidators & Forwarders Institute, Racine, Wis., Association of Commerce, and certain shippers intervened in support of the suspended rates. Rates will be stated in cents per 100 pounds.

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While the suspended rates are not so limited by the tariffs in their application, it is apparent that their practical application will be limited almost exclusively to traffic of freight forwarders and a few other large shippers. It is admitted that they were designed for the purpose of securing or retaining the largest possible volume of the freight forwarders' traffic. Forwarders originally operated concentration and distribution services in large urban centers where less-than-carload freight was assembled and shipped in carload quantities. About the year 1920, when the motortruck operator appeared as a reliable freight carrier, forwarders commenced using such carriers under contract to transport freight to and from points in the territories surrounding these urban centers. At present between 55 and 60 percent of the forwarders' traffic either originates at or is destined to points other than concentration or distribution centers. On April 1, 1936, the forwarders filed tariffs with us naming rates between a great majority of the points throughout the United States in which motor carriers were shown as participants. The concurring motor carriers receive a division of the charges resulting from those rates as compensation for their services.

On reargument in Acme Fast Freight, Inc., Common Carrier Application, 2 M. C. C. 415, 8 M. C. C. 211, the Commission found that the applicant in its operations as a freight forwarder is not subject to its jurisdiction under the Motor Carrier Act, 1935, part II of the Interstate Commerce Act. In Freight Forwarding Investigation, 229 I. C. C. 201, the Commission found that freight forwarders are not express companies subject to part I of the Interstate Commerce Act. In view of the legal status of the forwarders, they cannot lawfully continue to file tariffs with us or participate in joint rates with motor carriers. The suspended schedules name rates which are calculated to return approximately the same revenue to respondents as their present divisions of joint rates under the forwarder tariffs.

In justification of the proposed rates, respondents contend that the forwarder traffic is profitable to them; that the suspended rates are as high as the traffic will bear; that it furnishes them with much needed revenue; that it provides balanced loads over their routes; and that the proportional method of publication will simplify, standardize, and make uniform the rates and practices under

which they operate on traffic originating at or destined to points beyond their lines.

In support of their contention that this traffic is profitable, elaborate cost and revenue studies were introduced by re-
48 spondents and by some of the interveners. Exhibits showing the cost of operation of two carriers in the Chicago area, four carriers operating between Chicago and Wisconsin points, and three carriers operating between Evansville, Ind., Fort Wayne, Muncie, and South Bend, respectively, and points located in trade areas adjacent to each of those cities, claimed to be typical, were presented in an effort to demonstrate that forwarder traffic returns a better profit ordinarily than other traffic handled by them.

During the first six months of 1937 the two carriers operating in the Chicago area handled a total of 129,500 tons of freight at an average cost of 14.89 cents per 100 pounds, or 22.85 cents per truck-mile. The average profit on freight handled for forwarders amounted to 9.8 cents per 100 pounds, calculated on a basis of an average rate of 24.7 cents, determined from an analysis of the freight bills of one of these motor carriers for a 5-day period in April 1937. During this same period the average return on local traffic was 18.6 cents and on interline traffic 10.5 cents. The suspended rates range from 15 cents to 40 cents. The general basis of rates, while not uniform, is said to approach fourth class. The average revenue per stop on interline traffic during this period was 72 cents, on local traffic 104 cents, and on forwarder traffic 183 cents. The amount of revenue per stop is said to be an important item, especially in the Chicago area, in determining whether operations will be conducted at a profit or at a loss.

During 1937 the costs per 100 pounds of the four carriers operating between Chicago and Wisconsin points ranged from 26.36 cents to 37.93 cents and averaged 30.43 cents, and the costs per truck-mile ranged from 26.36 to 37 cents and averaged 29.85 cents. The proposed rates, if applied to the traffic handled by these carriers, would, it is estimated, average 34.67 cents and the average cost of providing service to the forwarders is estimated at 28.31 cents per 100 pounds. The profit of these carriers on forwarder traffic is thus estimated to range from 4.09 cents to 7.08 cents, or an average for all of them of 6.36 cents.

The suspended rates between Chicago and Wisconsin points, while not related to the local class rates, are approximately on the basis of class F, equal to 55 percent of first class. Rates from and to some points, such as Green Bay, Wis., are as low as the fourth-class rate or 50 percent of first class, while in other instances the rates are somewhat higher than column F. It is estimated that.

the suspended rates are about the same as the average of the divisions which respondents receive from first-class, second-class, and third-class rates on interline shipments originating at or destined to points beyond Chicago, handled jointly with other motor carriers.

49 The carriers operating between Indiana points show varying costs and revenue for the services they perform. A witness for one of these carriers operating between Terre Haute, Ind., and Indianapolis testified that 28 percent of the tonnage handled by this carrier was received from forwarders and that this traffic produced 29.8 percent of the total revenue. The average revenue on this traffic is stated to be 7 cents per 100 pounds greater than that received on interline traffic. Various comparisons of the cost and revenue of respondent Indiana carriers indicate that the revenue is greater from forwarder than from interline traffic, and that each realizes some profit on forwarder traffic above the cost of performing the service. The suspended rates in the Indiana tariff closely approximate fourth class.

The cost of service on forwarder traffic is calculated to be less than on either interline or local traffic, on the theory that one terminal service is practically eliminated at the concentration or distributing points, because pick-up and delivery service is generally performed at those points in the road-haul vehicle. Another expense which does not accrue on forwarder traffic, but which is present in connection with both local and interline traffic, is solicitation cost, which is borne by the forwarders when they originate the traffic. Solicitation cost is a considerable item of expense to motor common carriers, as shown by the cost figures presented by the respondents. The total expenses of one of the Wisconsin carriers, $137,380.94 for the year 1937, included solicitation costs of $5,382.50. Respondents are not in position to solicit a large amount of traffic which they receive at the distributing stations of the forwarders, because it originates at points great distances from their lines.

Traffic handled by forwarders moves for much longer distances than ordinary truck traffic. Most of the traffic upon which the suspended rates would apply moves to or from points more than 400 miles beyond the concentration or distribution stations. Shipments handled by forwarders through these stations have moved to or from 2,173 points, and a single shipper made shipments to 440 destinations in 37 States and British Columbia during September 1937. Respondents contend that they would not participate in the transportation of this long-haul traffic except in connection with the operations of the forwarders, and urge that

if the present charges they apply to forwarder traffic are increased to the basis of their full local rates, rather than continued at the same level by use of the proportional rates here proposed, practically all of the forwarder traffic would be lost to them.

In support of their contention that the rates proposed are as high as the traffic will bear, respondents and interveners
50 point out that the rates of the forwarders are the same as the rail class rates, except to Mountain-Pacific territory, where the forwarders' rates are about 95 percent of the rail class rates. They state that shippers will pay no higher rates than the rail rates and that the forwarders cannot afford to absorb the difference between the proportional truck rates here proposed and the local truck rates between the same points without an increase in the rates charged by the forwarders. An analysis of the results of the operations of the three principal forwarders in the territories covered by the prorates for the year 1937 indicates that the average rate paid to the forwarders on traffic to and from these territories was $1.55, out of which amount an average of about 24 cents was paid to respondents, and, after payment of operating expenses, the forwarders realized an average profit of only 1.04 cents per 100 pounds. These figures show an average loss for the forwarders in the Wisconsin and Indiana territories covered by the proposed rates of 3.06 cents and 8.6 cents per 100 pounds respectively, but that an average profit of 5.46 cents per 100 pounds resulted from the operations in the Chicago area.

On the basis of an analysis of the waybills of the three principal forwarders, for the second and third quarters of the year 1937, respondents calculate that during that year they handled for these forwarders 20,000 tons of traffic to and from the Wisconsin territory, 15,000 tons to and from the Indiana territory, and 63,000 tons to and from Chicago territory. On this traffic the gross revenue of respondents was in excess of $624,000. The total revenue of motor carriers from all traffic of the three principal forwarders handled through Chicago to and from all points is calculated as $1,178,000 for 1937. Witnesses for respondents testified that loss of this revenue or its substantial curtailment would have a serious effect on their operations and probably would cause impairment of the service of many of them.

Shippers located at so-called off-line points, that is, points at which forwarders do not have consolidated rail service, desire to continue the use of coordinated service of the forwarders without increased rates. It is urged that these shippers cannot ship by rail in competition with shippers located at urban centers, because of the slower all-rail service available to them as compared with the fast merchandise trains to and from urban centers.

The delay in shipments from off-line points occurs principally at the urban centers, such as Chicago and the other reforwarding points named in these tariffs, where shipments transferred from one rail line to another are subject to delays of from 12 to 24 hours. This delay may result in loss of sales and consequent loss of profit. The service furnished by the forwarders by
51 use of respondents' motor-vehicle service to the urban centers is faster than the all-rail service, and these shippers ask that it be continued at the present rates. They also expressed dissatisfaction with the service by all-truck transportation for di[illegible]nces over 300 miles, stating that they have found it less conv[illegible]nt and reliable than the service of the forwarders for such d[illegible]ces.

It is [illegible]ionable whether the proposed rates may properly be con[illegible]ed as true proportional rates. It is to be noted that certain of the proposed rates may be applied on traffic which does not originate beyond the reforwarding point when it is included in the same vehicles with shipments which have originated beyond. Such traffic is local traffic and it is clear that the only justification presented for special rates on such traffic is that it is tendered by shippers who are also offering traffic which has originated beyond the reforwarding points. The generally understood and usually accepted definition of the term "proportional rate" is a rate established for only a portion of a through movement contingent upon the fact that the traffic originated at or is destined to a point beyond the point of origin and destination between which the proportional rate applies. Many years ago the Commission defined a proportional rate as one which applies to a part of a through transportation entirely within the jurisdiction of the Interstate Commerce Act. However, proportional rates contingent upon a movement beyond the points between which the proportional rate applies, by carriers which were not subject to the provisions of the act, have at various times since been recognized and approved. Among these are the so-called ex-lake rates on grain and other commodities, lake-cargo rates on coal, and certain rates on lumber from Pacific coast origins. In Tariffs Embracing Motor Truck or Wagon Transfer Service, 91 I. C. C. 539, the Commission in 1924 approved the publication, by a water carrier subject to the act, of proportional rates lower than local rates, for application from and to its terminals in connection with movements to and from such terminals by certain carriers not subject to the act.

It is also questionable whether traffic which is consolidated by the forwarder en route is through traffic. It is a generally accepted principle that, in the absence of proper transit arrange-

ments, traffic is entitled to proportional rates lower than local rates only when the movements for which the proportional rates apply are continuous from and to points beyond the proportional-rate points. If the continuity of the through movement be broken, the full local rates apply. Considering the movement in one direction, for example, it is here proposed to establish proportional rates for traffic which is surrendered to the forwarder at the reforwarding point by the rail or motor carriers which have transported it to that point and, after being
52 sorted, it is tendered to respondents, usually in less-than-truckload quantities, but in some instances in amounts of 10,000 or 20,000 pounds. The unit of shipment from point of origin to final destination is not preserved. For example, a consolidated carload shipment may be transported by rail from New York City to Chicago, at which point it is delivered to the car forwarder. There the car forwarder, who under the findings in Acme Fast Freight, Inc., Application, supra, and in Freight Forwarding Investigation, supra, has the status of a shipper, will reship the consolidated carload by motor vehicle in various less-than-truckload shipments at the proposed proportional less-than-truckload rates, in the event they are approved. The only requirement for application of the proportional rates, which are materially lower than the local rates between the same points, is that reference be given to inbound billing on which the traffic moved into the reforwarding point, or, when movement is in reverse direction, that a statement be made as to the final destination to which the traffic is expected to go.

Inasmuch as the proposed rates are applicable on all freight, their approval would tend to perpetuate such "all-commodity" rates applicable on practically every commodity without regard to its classification rating or individual transportation characteristics. Thus high-grade and normally highly rated traffic will move at the same rates as lower-grade traffic. Respondents publish both class and commodity rates, which are applicable on local and interline movements. These rates are calculated to make due allowance for the transportation characteristics of the commodities in order that each commodity may bear its fair share of the transportation burden. The tendency of all-freight or all-commodity rates is to break down the class-rate structure and to render class rates a nullity.

Perhaps the most serious question raised in this proceeding is whether the proposed rates will be reasonably compensatory. In Motor Carrier Rates in Central Territory, 8 M. C. C. 233, we fixed minimum reasonable class and commodity rates for the transportation of property by motor vehicle, with certain ex-

cepted commodities, between all points in that territory, which includes all of the points here considered. The minimum rates were prescribed as a result of evidence introduced by the carriers, including respondents, indicating the dire need of motor carriers for higher revenues in order to enable them to render efficient service. The results of respondents' cost studies would appear to indicate a substantial profit on traffic handled at the proposed rates, but we are not persuaded that experience would substantiate the accuracy of the cost studies. The proposed rates are very materially lower than the rates in effect generally prior to our decision in the above proceeding, and there
53 is a still greater spread between the proposed rates and the prescribed rates. The only differences which can be discerned between the traffic offered by the forwarders and other large shippers and other traffic handled by the respondents is (1) the volume of the traffic and (2) the asserted convenience of receiving the traffic at the forwarders' terminals. The suspended tariffs and the statements contained in the record as to the method of their application indicate that by far the greater bulk of this traffic moves in less-than-truckload quantities. The effect upon operating expenses of receiving the traffic at, or delivering it to, the forwarders' terminals cannot be determined with any degree of accuracy upon this record.

Therefore, aside from the question whether the proposed rates are true "proportional" rates, and whether it would be lawful to apply such rates on the traffic under consideration, there is obvious doubt whether the proposed rates will have the result for which they were established. For many years, common carriers have been handling annually millions of pounds of less-than-carload traffic. Since the advent of the forwarder, the tonnage has materially lessened, but it is still large. Up to this time, the carriers subject to regulation have earned their full local rates upon less-than-carload or less-than-truckload traffic without regard to whether the shipper was able to offer only a small amount of traffic or a large amount. If respondents are permitted to establish the proposed rates for the transportation of freight in less-than-truckload quantities merely contingent upon the fact that a forwarder has moved the traffic into the reforwarding point or will move it out of such point in a pool car or a pool truck, it is probable that other common carriers will attempt to meet the situation by similarly undercutting their local rates. It is apparent that, when this situation is brought about, the carriers will be handling the same amount of freight for much less revenue, which would have the effect of exaggerating the financial straits of the carriers. Furthermore,

the loss of revenue will not be offset by any lessening of expenses or by the handling of any greater volume of tonnage by the carriers as a whole. It is not apparent that any item of expense which is present in connection with ordinary less-than-truckload shipments is not present in connection with traffic moved under the proposed rates, except in the instance of rates published to apply in volumes of 10,000 and 20,000 pounds, and it must be considered that these rates are materially lower than the proposed rates for less-than-truckload quantities. It may well be that the expense of handling this class of traffic will actually be greater than that of handling local shipments of the same amounts, because of additional accounting and policing necessary to establish the fact that shipments are entitled to the proportional rates by reason of a previous or a future consolidated movement.

54

The Commission in Freight Forwarding Investigation, supra, found that the forwarder as described upon the record there made, in its relation to the rail lines, is a shipper. It would appear to follow without question, therefore, that the forwarder is also a shipper in its relation to respondents. It was also found in that proceeding that regulation of a forwarder in its relation to the owner of property for whom the forwarder arranges transportation is not comprehended in the provisions of either part I or part II of the act. In Acme East Freight, Inc., Application, supra, the Commission said:

"No provision in part II authorizes a motor common carrier, in the absence of joint rates, to furnish transportation service for another common carrier under a contractual arrangement providing special compensation differing from that produced by its published rates. On the contrary, part II seems clearly to contemplate that the compensation which a motor carrier receives for transportation service shall either be based on its published rates filed with the Commission, where the haul is local, or take the form of divisions of joint rates filed with the Commission where the haul is joint, both divisions and rates being subject to Commission regulation."

Since the Commission, in that proceeding, held also that, in view of the legal status of the forwarder, it could not file tariffs with us or join in joint rates with motor carriers, the conclusion is inescapable that the rates here proposed are, in their true nature, special rates for a particular type of shipper. This is a circumstance which was not present in Tariffs Embracing Motor Truck or Wagon Transfer Service, supra, or in the various proceedings involving rates to or from ports in connection with movements beyond the ports by common carriers by water. It

is worthy of note, also that, in all of those proceedings, the sum of the proportional rate and the local rate of the carrier performing the other portion of the haul was the basis on which the through charges paid by the owner of the property for the movement were determined. In the instant situation, the proposed proportional rates have no bearing whatever upon the charges collected from the owner of the property, since the owner pays charges based on the through rate of the forwarder.

The record is not convincing that respondents and interveners are correct in their assumption that respondents would lose all of the revenue they now receive on traffic handled for forwarders, in the event that the proposed rates are not approved. The evidence of shippers at off-line points as to their need for the service rendered by the forwarders in order to compete effectively with shippers at urban centers indicates that possibly they may be able to pay rates higher than those now paid the forwarders in order to secure the benefits of expedited service. The forwarders in their operations over rail lines pay full local rates, securing their profits by consolidation.

The figures presented as to the ability of the forwarders to pay higher charges to respondents without increase in the rates charged shippers are not persuasive. These figures show that the forwarders had an average loss per 100 pounds of 3.06 cents and 8.6 cents respectively, on traffic to and from the Wisconsin and Indiana territories, and an average profit of 5.46 cents per 100 pounds in the Chicago territory. Yet, when these averages are applied to the actual tonnages handled by respondents for the year 1937 in these territories, an average loss on all of this traffic of 0.8 cent per 100 pounds is produced, rather than the average profit of 1.04 cents presented by interveners in their calculation. Since it must be assumed that the forwarders would not so vigorously seek the proposed rates from respondents in order to continue operations conducted at a loss, these calculations can be accorded little weight by us. Whether or not respondents will lose all or a substantial portion of the traffic in the event the proposed rates are disapproved does not seem to us to be so important as is the question whether, by approving the rates, we would be abrogating long-established principles and transportation practices in connection with rate making, and would be encouraging other carriers as well as respondents to establish preferential rates in an effort to court favor with the larger shippers. Failure to approve the proposed rates will doubtless result in little, if any, diminution of the traffic. Some of the traffic may conceivably go to other forms of transportation, but the hauls of motor carriers on the traffic remaining will probably be somewhat

longer than they would secure under the proposed rates. As previously pointed out, the establishment of rates on forwarder traffic lower than the general level of rates applicable on similar traffic handled for other shippers would doubtless be followed by similar reductions by rail and other competing carriers. In view of the unfavorable financial condition of the transportation industry as a whole, we must regard with doubt any proposal to establish a practice which will probably initiate a cycle of rate reductions with no corresponding increase in the total tonnage transported by the industry. Moreover, we are unable to conclude from the evidence that the suspended rates would not produce results that are contrary to the policy of Congress declared in section 202 (a) of part II of the act.

We find that the suspended rates are unlawful. An order will be entered requiring their cancelation and discontinuing this proceeding.

56 EASTMAN, Commissioner, dissenting:

In this proceeding no evidence in opposition to the suspended rates was presented by any one. No burden rested on respondents to justify the rates, but they nevertheless presented much evidence in support, as did forwarding companies and shippers. The question is whether we can find upon the record that the rates are in any respect unlawful. In the absence of evidence justifying such a finding, we must permit them to become effective. Upon a record which consists wholly of evidence submitted by proponents, the majority find that the rates are unlawful and order them to be canceled. With this finding I do not agree.

In the tariffs these suspended rates are termed "proportional rates," and the majority report contains considerable discussion as to whether they are true proportional rates. It is not, in my judgment, important whether they are properly or improperly designated, the essential question being whether they are lawful or unlawful. With one exception, "proportional rates" are not defined in either part I or part II of the Interstate Commerce Act. The exception is found in part I in section 6 (13) (c), which was originally enacted in the Panama Canal Act of 1912 and contains the following definition:

"By proportional rates are meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water."

It is clear that this definition is for the particular purposes of this paragraph, which authorizes the Commission to prescribe "proportional rates by rail to and from the ports to which the

raffic is brought, or from which it is taken by the water car-
ier." However, the definition conforms in general to the mean-
ng which by custom has come to be attached to the term, that
eing rates which apply to what is in reality a part of a through
aul and hence are limited to traffic which has received a prior
aul or is to receive a subsequent haul by a connecting carrier.
hey are like divisions of joint rates, but differ in that the con-
ecting carriers accept no joint responsibility for the through haul
ut each confines its responsibility to a part.

For present purposes, however, the most important character-
stic of a proportional rate is that it may lawfully differ from
he local rate on the same traffic between the same points, because
is attended by differing circumstances and conditions. This
haracteristic it shares with rates which go by other names, al-
hough they all have a family resemblance. Among these are
xport, import, ex-lake, ex-river, and lake-cargo rates. The
uestion here is at bottom whether the evidence shows that the
suspended rates possess this characteristic.

7 In a very early case, New York Board of Trade &
Transp. v. Pennsylvania R. Co., 4 I. C. C. 447, the Com-
ission undertook to compel certain railroads to desist from
harging less on import traffic from ports to inland destinations
han on like domestic traffic from and to the same points. The
upreme Court in Texas & P. Ry. Co. v. Interstate Commerce
ommission, 162 U. S. 197, reversed this action, on the ground
hat the circumstances and conditions, particularly the com-
ercial and competitive conditions, surrounding the two forms
f traffic were dissimilar. For like reasons the Commission has
rescribed or sustained ex-lake rates on grain and iron ore, and
ake-cargo and ex-river rates on coal, which are all lower than
he corresponding local rates. The ex-lake rates apply from Lake
rie ports on grain and iron ore which has been brought to the
orts by boat, the lake-cargo rates apply to Lake Erie ports on
oal which is to be carried from the ports by boat, and the ex-
ver rates apply from Ohio River ports on coal which has been
rought to such ports by barge.

The designation "proportional" is ordinarily (although not
ways) used where the other part of the through movement is
a common carrier. In the case of the ex-lake, lake-cargo, and
-river rates, however, the water part of the movement may be,
d often is, by contract or private carrier, and the same may be
ue of export and import rates. Indeed, in Rates on Bunker
oal, 73 I. C. C. 62, the Commission found that rates, lower than
e corresponding local rates, on coal for delivery at ports into
ssels for fuel use by such vessels were not unlawful, because
ey were attended by differing circumstances and conditions.

With this preliminary statement, let us see what the record shows with respect to the suspended rates, other than certain quantity and truckload rates which I shall discuss separately.

1. The circumstances and conditions surrounding the traffic to which these rates will apply differ materially from those attendant upon the corresponding local traffic. Not only are the commercial and competitive conditions essentially different, because of the fact that the hauls to which the suspended rates apply are in reality parts of much longer through hauls, but the evidence shows affirmatively that this traffic costs less to handle than the corresponding local traffic. There is a very substantial saving in both terminal and solicitation expense.

2. Not only is there this justification for a difference in rates, but there is no complaint upon the part of shippers that this difference will in any way operate to their prejudice or disadvantage. No shipper took advantage of the opportunity which the hearing offered to voice any such complaint, and in fact the record contains no opposition from any source to the proposed rates.

58 3. Through elaborate cost studies which are in no way challenged of record, respondents showed that the traffic which will move on these suspended rates will be profitable to them, and in fact substantially more profitable than much of their other traffic, particularly their interline traffic with other motor carriers.

4. The movement of the traffic to which the suspended rates will apply preponderates in a direction opposite to that in which the movement of respondents' other traffic preponderates, thus tending to a desirable traffic balance.

5. Shippers value very highly the service which they receive from the forwarding companies, to whose traffic the suspended rates will chiefly apply.

6. The forwarding companies cannot without grave disadvantage, in connection with this traffic, pay rates higher than those under suspension. In other words, the suspended rates are as high as the traffic will bear.

This is the state of the record as I read it, and clearly it affords no basis for a finding that the rates in question are unlawful. Let us, then, consider the reasons which the majority advance in support of such a finding:

1. It is said that it is "questionable whether the proposed rates may properly be considered as true proportional rates." As indicated above, this question is not in itself of importance. However, the observation of the majority seems to be directed particularly to certain quantity and truckload rates provided by note

2 to item 30 and by item 35 of the Central States Motor Freight Bureau, Incorporated, tariff MF–I. C. C. No. B–138. These rates appear to have local, in contrast with proportional, application, and are not covered by the evidence of record. In all of the circumstances, the examiner recommended that these quantity and truckload rates be found to be unlawful, and no exceptions to this recommendation were filed. His conclusion with respect to these rates may, therefore, be accepted.

2. It is said that it is a "generally accepted principle that, in the absence of proper transit arrangements, traffic is entitled to proportional rates lower than local rates only when the movements for which the proportional rates apply are continuous from and to points beyond the proportional rate points." By "continuous" is apparently meant preservation of the "unit of shipment from point of origin to final destination," and it is pointed out that here the rail portion of the movement is in carloads and the truck portion in less than truckloads.

This "generally accepted principle" is one with which I am not familiar. The majority do not support it by citations, nor do they indicate what sections of the act are violated by departure
59 from this principle. It seems to be honored in the breach as often as in the observance. In the case of the ex-lake and lake-cargo rates, for example, the rail portion of the movement is in carloads, but the water portion is in boatloads made up of many carloads. Grain affords another illustration. When it moves into the primary markets much of it goes into storage or to mills. The outbound carload moving thereafter on the proportional rate may be made up of parts of inbound carloads from various sources or it may consist of flour. In Cotton from and to Points in Southwest and Memphis, 208 I. C. C. 677, the Commission specifically approved the application of through rates to cotton moving into concentration points in less than carloads and out in carloads.

The tariffs containing the suspended rates are subject to criticism in that the governing rules may not be sufficiently definite to insure application of the rates to traffic which meets the intended requirements and to no other traffic, especially in view of the 48-hour period during which the through movement may be interrupted at the reforwarding point. Provisions in such rules which permit of adequate policing are a necessity. However, this is a defect which may readily be remedied.

3. The suspended rates are criticized because they are so-called "all-commodity" rates. There is an intimation that they are unlawful on that account, but without specific finding to that effect, or indication of any particular provision of the act that is violated. Rail tariffs and motor-carrier tariffs now in effect contain many

such rates. They can be unlawful, if they are above maximum or below minimum limits of reasonableness or if they are unduly preferential of or prejudicial to particular commodities or shippers, but there is no proof or even allegation of record that the suspended rates are unlawful in either respect.

4. It is said that the "most serious question raised in this proceeding is whether the proposed rates will be reasonably compensatory." It is conceded that the "results of respondents' cost studies would appear to indicate a substantial profit on traffic handled at the proposed rates," but the majority say they are "not persuaded that experience will substantiate the accuracy of the cost studies." Apart from the fact that respondents have here no burden of proof, it is difficult to know what proof could be sufficient to overcome doubts of so vague a character. The uncontradicted evidence indicates, not only that the suspended rates will be profitable to respondents, but that they will be more profitable than much of their other traffic, and this showing is made without allowance for the relatively lower expense incurred in handling the traffic to which the suspended rates will apply. The majority plainly fail to grasp the reasons for this advantage in
60 expense. Respondents either deliver or receive the traffic at the reforwarding point in truckload quantities, although it may be picked up or delivered in consecutive small lots. There is thus, as one witness stated, a "semi-truckload" movement, with consequent saving in terminal expense, as compared with local movements of less-than-truckload lots. There is also substantial saving of solicitation expense on this traffic.

The majority have much to say about the minimum rates fixed in Motor Carrier Rates in Central Territory, supra, and state that the "proposed rates are very materially lower than the rates in effect generally prior to" that decision, and that "there is a still greater spread between the proposed rates and the prescribed rates." This is a much broader statement than the record will support, particularly in view of the extent to which motor-carrier traffic moves in central territory on commodity rates and exceptions to the classification. The record does show that there are local class rates which are higher than the suspended rates, but this is, of course, not proof that the latter are below a minimum reasonable level. The difference is certainly no greater than that which exists in the western district between the proportional and the corresponding local rates on grain prescribed by the Commission, with little or no evidence of any difference in expense.

5. There is a discussion exhibiting considerable prejudice against forwarding companies and suggesting that their operations are

hurtful to the rail and motor carriers. I do not agree with the discussion, but since it is largely off the record, I need not elaborate my views on this subject here.

6. It is suggested that the traffic could bear higher rates. The reasoning seems to be that the forwarding companies serve shippers so well that the latter would be willing to pay more for the service than they now pay, thus enabling the forwarding companies to pay local rates to respondents instead of the lower proportional rates.

It is also suggested that the forwarding companies might be able to pay more to respondents without increasing their own rates. The three principal forwarders analyzed the revenues and costs of all their traffic originating or terminating on February 11, 1938, in the three territories here under consideration. The figures showed that they lost an average of 3.06 and 8.6 cents per 100 pounds, respectively, on the traffic to and from the Wisconsin and Indiana territories, and made an average of 5.46 cents in the Chicago territory. The net result was an average profit of 1.04 cents per 100 pounds. The majority applied these averages to the tonnages handled in the respective territories in the entire year 1937, and the result was a net loss of 0.8 cent per 100 pounds.

61 This test, they seem to think, discredits the figures submitted. On the contrary, it is not surprising that there should be some disparity in net results when averages derived from analysis of the traffic of a single day are applied to the tonnages of an entire year. The figures indicate that the margin of profit on which the forwarding companies operate is very slim, and this is corroborated by the recent report of the commission in Freight Forwarding Investigation, 229 I. C. C. 201. It there appears, at page 204, that in 1936 the total profit of the three forwarders was about $725,000, "equal to about 1 cent per 100 pounds and 1 percent of their gross revenues." As a matter of fact, the profit was 0.71 percent of gross, rather than 1 percent.

There are other speculations as to the results which might ensue, if the suspended rates are canceled. I find in these various suggestions and speculations no basis for a conclusion that the suspended rates are unlawful.

Summing up the situation, the record clearly supports the suspended rates, but the majority doubt that it is adequate. Such doubt does not justify a finding that the rates are unlawful. At most it could only furnish a reason for reopening the case and for the presentation of record of the facts, if any, upon which the doubt is based; but it is very late in the day for such procedure.

62 *Exhibit C to complaint*

Interstate Commerce Commission

Investigation and Suspension Docket No. M-247

Proportional Rates Between Chicago and Wisconsin Points

Report and order recommended by A. E. Later, Examiner

Served Aug. 5, 1938

NOTICE TO THE PARTIES

Exceptions, if any, must be filed with the Secretary, Interstate Commerce Commission, Washington, D. C., and served on all other parties in interest, within 20 days from the date of service shown above, or within such further period as may be authorized for the filing of such exceptions. Otherwise, at the expiration of said period for the filing of exceptions, the attached order will become the order of the Commission and will become effective unless exceptions have been seasonably filed by other parties, or the order has been stayed or postponed by the Commission.

Interstate Commerce Commission

Investigation and Suspension Docket No. M-247

Proportional Rates Between Chicago and Wisconsin Points

Submitted ——— Decided ———

1. Proposed, less-than-truckload, proportional rates on all freight between Chicago, Ill., and points in Wisconsin, and between Chicago, Ill., points within 50 miles thereof in Illinois and Indiana, and between Evansville, Indianapolis, Fort Wayne, Muncie, and South Bend, Ind., and points in trade areas surrounding each of those points founds justified. Proceedings discontinued.
2. Proposed rules in suspended tariffs in certain instances, and certain proposed truckload, proportional rates in such tariffs found not justified, and ordered canceled.

Earl Girard, Ferdinand Born, Eugene L. Cohn, P. E. Johnson, J. E. Hansen, and P. E. Morgensen for respondents.

J. R. Turney, Robert E. Quirk, F. J. Knaack, A. F. Bowman, R. B. Hall, Emanuel Paulsen, and H. J. Bowman for interveners.

Recommended by A. E. Later, Examiner

By tariff schedules filed to become effective, one on December 1, 1937, and two on January 15, 1938, respondent Central State Motor Freight Bureau, Inc.,[4] of Chicago, Illinois, proposes to establish truckload and less-than-truckload proportional all-commodity rates between Chicago and named points in Wisconsin, between Chicago and named points within 50 miles thereof in Illinois and Indiana, and between Evansville, Indianapolis, Fort Wayne, Muncie, and South Bend, Ind., respectively, on the one hand, and named points within the trade area of each of those cities on the other applicable on all classes of freight, with exceptions, moving from or to points beyond as truckload or carload shipments. On the Commission's own motion the tariffs were suspended in their entirety until March 1, 1938, resuspended until May 30, 1938, and subsequently voluntarily further postponed until August 30, 1938. Rates will be stated in cents per 100 pounds.

The majority of the carriers operating between Chicago and Wisconsin territory and a considerable number of those in the Indiana territory are parties to the suspended tariffs and are agreeable to permitting other carriers in these territories to join in the tariffs here in issue.

In accordance with the provisions of the Motor Carrier Act, 1935, the proceeding was referred to the examiner for hearing and the recommendation of an appropriate order thereon. Hearing has been held.

Respondents and interveners on brief contend that the suspension should be vacated as a matter of law. They concede that they have the "burden of procedure" in cases such as this but insist they do not have imposed on them by the Motor Carrier Act, 1935, the burden of proof as to the lawfulness of the suspended schedules. A number of court and Commission decisions are cited as supporting this contention. Respondents contend in effect that the burden is on the Commission to prove that the suspended tariff schedules are unlawful. This contention misconceives the purpose of investigation proceedings.

When the Commission suspends a tariff schedule and commences an investigation it is acting in its quasi-legislative capacity and, as stated in the suspension notice herein, an investigation was being undertaken concerning the lawfulness of the "rates, charges, regulations, and practices stated in said schedules

[4] Includes in addition the participating motor carriers named in the suspended schedules, hereinafter referred to collectively as respondents.

contained in said tariffs." The purpose of the investigation is to ascertain the facts surrounding the publication of the schedules. Respondent is the only one who has knowledge of those facts. As proponent of the tariff he is bound to appear and present those facts, and if he does not, the tariff or any part thereof may be ordered canceled. When all of the facts are presented at an open hearing a conclusion can then be reached as to the lawfulness of the tariff schedules under investigation. If the facts disclose a violation of the act or any lawful regulation issued thereunder, then the schedules may be ordered canceled. If, on the other hand, the facts show that the tariff schedules do not violate the act or lawful regulations, then an order discontinuing the proceeding should be entered. The Commission has long required proponents of tariff schedules to justify the same without question. The question is not one of "burden of procedure" or "burden of proof" but the production of pertinent facts by the persons having exclusive knowledge thereof so the Commission can discharge the obligations imposed on it by Congress.

64 Originally forwarders operated concentration and distribution services in large urban centers, where less-than-carload freight was assembled and shipped in carlot quantities. Commencing in 1920 when the motortruck appeared as a reliable freight carrier the forwarders commenced using them under contract to transport freight from points in the territory surrounding these urban centers. At present between 55 and 60 percent of the forwarders' traffic either originates at or is destined to off-line points. This continued until April 1, 1936, when forwarders filed tariffs in which the motor carriers concurred, naming rates between points throughout the United States. The concurring motor carriers receive a division of those rates as compensation for their services.

The rates herein were published by respondents to meet a situation created by the decision in Acme Fast Freight, Inc., Common Carrier Application, 2 M. C. C. 415, decided July 20, 1937, wherein Division 5 found applicant to be a broker and not a carrier under the Motor Carrier Act, 1935, and as such not permitted to publish joint tariffs with motor carriers. The entire Commission, on July 12, 1938, in part reversed Division 5 and found applicant to be a common carrier but not subject to Part I or Part II of the Interstate Commerce Act, and not permitted to publish joint rates with motor carriers. This decision becomes effective September 15, 1938, after which time the forwarders, whenever they use respondents' services, will be compelled to pay such carriers applicable local class or commodity rates higher

than the divisions now paid unless the suspended schedules or others of a similar nature are approved.

The suspended schedules name rates identical with the divisions they are now receiving under the forwarders' tariffs which must be canceled on September 15, 1938. The rates are not limited to forwarders but may be used by shippers meeting the tariff conditions. It is admitted that the suspended rates will be used principally by forwarders. Respondents are desirous of retaining this forwarder traffic.

Respondents contend it is profitable traffic; that the suspended rates are as high as the traffic will bear; that it furnishes them with much needed revenue; that it balances their loads; and that the proportional method of publication will simplify, standardize, and make more uniform the rates and practices under which they participate on traffic originating at or destined to points beyond their lines.

In support of their contention that this traffic is profitable, elaborate cost and revenue studies were introduced by respondents and some of the interveners. Exhibits showing the cost of operations of two carriers operating in the Chicago area, 4 carriers operating between Chicago and Wisconsin points, and 3 carriers operating between Evansville, Indianapolis, Fort Wayne, Muncie, and South Bend and points located in trade areas adjacent to each of those cities, claimed to be typical, were presented to demonstrate that forwarder traffic returned a better profit, ordinarily, than other traffic handled by them and that cost of handling forwarder traffic is no greater than local and interline traffic.

During the first 6 months of 1937 the two carriers operating in the Chicago area handled a total of 129,500 tons of freight at an average cost of 14.89 cents per 100 pounds or 22.85 cents per truck mile. The average profit on freight handled for forwarders amounted to 9.80 cents per 100 pounds calculated on the basis of an average rate of 24.7 cents, determined from an analysis of the freight bills of one of these motor carriers for a 5-day period in April, 1937. During this same period the average rate on local traffic was 18.6 cents, and on interline traffic 10.5 cents. The suspended rates range from 15 cents to 40 cents. The general basis of rates, while not uniform, approach 4th class. The average revenue per stop on interline traffic during this period was 72 cents, on local traffic 104 cents, and from forwarder traffic 183 cents. The amount of revenue per stop is an important one with carriers in the Chicago area in determining whether operations will be conducted at a profit or at a loss.

65 The average cost of the 4 carriers operating between Chicago and Wisconsin points during 1937 was 40.43 per

100 pounds ranging from 26.36 cents to 37.93 cents and 29.85 cents per truck mile, ranging from 26.36 cents to 37 cents. The proposed rates of these carriers average 34.67 cents, and the average cost of providing service to the forwarder 28.31 cents per 100 pounds. The lower cost of handling forwarder traffic is predicated on the lowest cost of pick-up and delivery service performed in road-haul vehicles on forwarder traffic. The profit of the carriers on forwarder traffic ranges from 4.09 cents to 7.08 cents or an average for all of them of 6.36 cents.

The suspended rates between Chicago and Wisconsin points, while not related to the class rates, are approximately on the basis of Column F equal to 55 percent of first class. At some points, such as Green Bay, Wis., the rates are equal to the 4th class rate, in other instances the rates are higher than column F. It is calculated that the suspended rates are about the same as the average of the divisions of first-, second-, and third-class rates which the respondent carriers receive on interline shipments with other motor carriers on traffic originating at or destined to points beyond Chicago.

The carriers operating between Indiana points showed varying costs and revenue for the service they perform. A witness for one of these carriers operating between Terre Haute, Ind., and Indianapolis testified that that 28 percent of the tonnage handled by this carrier was received from forwarders, and this traffic produced 29.8 percent of the total revenue. The average revenue on this traffic is 7 cents per 100 pounds greater than it receives on interline traffic. Various comparisons of the costs and revenue of respondent Indiana carriers indicates that the revenue is greater from forwarder than from interline traffic and that each realizes some profit on forwarder traffic above the cost of performing the service. The suspended rates in the Indiana tariff closely approximate 4th class. These rates appear to be on about the same level as in the Chicago area but somewhat lower than those between Chicago and Wisconsin points.

All of the parties to this proceeding, motor carriers, shippers, and forwarders, were of the opinion that the traffic to which the suspended schedules apply is more nearly comparable to interline than local traffic. The rates, with the exception hereafter discussed apply only on traffic originating at or destined to points beyond the lines of respondents. One example is given of 42 shipments aggregating 10,480 being handled on one truck on one day either originating at or destined to Racine, Wis. The shipments moved from or to points widely scattered over the United States.

A shipper supporting the suspended schedules presented an exhibit which shows 2,347 shipments aggregating 697,551 pounds

was shipped via forwarders to 440 destinations in 37 States and British Columbia during the month of September 1937. There are listed in an exhibit 2,173 points from or to which shipments have been made originating at or destined to points named in the suspended tariffs. Most of the traffic to which the suspended schedules will apply moves to points in excess of 400 miles beyond the concentration or distributing stations named therein. The forwarder traffic moves for much longer distances than ordinary truck traffic. No greater service is performed on traffic to which the suspended rates apply than on interline traffic. The cost of service is generally calculated at less than either interline local traffic principally because one terminal service is practically eliminated at the concentration or distributing points because pick-up and delivery service is generally performed at those points in the road-haul vehicle. Another expense which does not accrue on forwarder traffic which is present on both local and interline traffic is solicitation costs. This expense is borne by the forwarders. Solicitation costs are a considerable item of expense to motor common carriers, as shown by the cost figures presented by the respondents. The total expenses of one of the Wisconsin carriers including solicitation is shown as $137,380.94 for the year 1937. The solicitation costs represent $5,382.59 of the total costs. Respondents point out that
66 they are not in a position to solicit a large amount of traffic which they receive at the distributing stations of the forwarders because it originates at points great distances from their lines.

Respondents contend that the suspended rates are very near if not at the maximum of what the traffic will bear. In this they are supported by the witnesses for intervener Freight Consolidators and Forwarders Institute. In an exhibit covering the operations of the three principal forwarders the following appears: That the average through rate charged the shippers between points in the three territories here involved and various points scattered throughout the United States in 1937 was 155 cents; that the average rate paid to respondents was in excess of 24 cents; and that after paying operating expenses an average profit of 1.04 cents is realized. A loss of 3.06 cents and 8.60 cents was suffered in the Wisconsin and Indiana territories, respectively, and a profit of 5.46 cents realized in the Chicago area.

Judicial notice may be taken of the fact that motor carriers in central territory are in financial distress. The further loss of traffic which respondents fear if they are not permitted to establish rates on the level here proposed may be serious. A number of witnesses for respondents testified that the loss of forwarder

traffic will seriously affect their companies and probably result in greatly curtailed service. Based on a way-bill analysis of the forwarders for the second and third quarters of 1937, respondents handled a total of over 128,000 tons of forwarder traffic during 1937, about 20,000 tons from and to Wisconsin territory, 45,000 tons in Indiana, and 63,000 tons in the Chicago area on which they received revenue in excess of $624,000. This does not represent the total volume of off-line forwarder traffic handled by motor carriers during 1937 through the Chicago station. That tonnage aggregated 175,000 tons for which the motor carriers rendering the service received a total of over $1,780,000.

In support of the contention that forwarder traffic tends to balance their loads, respondent presented an exhibit showing that tonnage originating at or destined to off-line stations in the three territories here involved handled by respondents in 1937 aggregated 128,676 tons of which 39,471 tons moved from distributing stations of the forwarders to off-line points and 89,205 tons moved from off-line points to concentration stations of the forwarders. In every instance the bulk of respondents' local and interline traffic is from the distributing points there involved to off-line points. This fact respondents insist balances their loads, permits more economical and efficient operation and allows the carriers to render local and interline service at lower rates than would otherwise be necessary. The conclusion seems justified that forwarder traffic is a considerable factor in the economical and efficient operation of the respondents.

Respondents contend that the proportional method of publishing rates for motor carriers will simplify and standardize the publication not only of rates on forwarder traffic but on interline traffic. They insist that divisions between motor carriers lack uniformity, and result in many bitter disputes between them that would be eliminated and the cost of tariff publication reduced if the rates on these classes of traffic were published on a proportional instead of on a joint basis. It is not necessary to here consider the publication of interline rates. With respect to forwarder traffic it has now become an absolute necessity that the rates on forwarder traffic be published on that basis if respondents are to retain the forwarder traffic unless the forwarder rates to shippers are raised. The forwarders charge the shippers the rail class rates on the traffic they handle, except to Mountain Pacific territory where the rates are about 95 percent of the class rates. They insist that the shippers will not pay in excess of rail class rates on this traffic for competitive reasons. This appears to be somewhat at variance with the testimony of shippers

located at off-line points that the forwarder service was essential to them if they wish to compete with shippers located in urban centers who have available fast merchandise trains to many shipping points.

67 In support of the legality of the proportional method of rate publication respondents refer to numerous cases where the Commission has approved this method of rate publication. Most of these cases relate to the publication of rates on traffic moving partly by rail and partly by water. The case most strongly relied on by respondents is Tariffs Embracing Motor Truck or Wagon Transfer Service, 91 I. C. C. 540. There the Commission approved the publication for a water carrier subject to the Interstate Commerce Act of proportional rates lower than the local rates for use in connection with motor carriers not subject to that act from inland New England points to Southern destinations. This case was decided prior to the passage of the Motor Carrier Act, 1935. While in some respects the case differs from the present one, the principles there enunciated appear applicable here.

The Motor Carrier Act permits but does not require motor and rail carriers to join in through rates. The rail carriers generally have refused to join in such rates and the Commission has no authority to compel either the rail or motor carrier to establish through routes or joint rates. This being the situation, should motor carriers be compelled to forego the forwarder traffic because they cannot establish proportional rates on a compensatory basis that will permit them to move the traffic, or on the other hand require shippers to pay increased freight charges to obtain a service not now otherwise available? From the record herein it may be concluded that the handling of forwarder traffic differs in a number of respects from the handling of local traffic, and that the method here used of publishing proportional rates applicable on traffic moving beyond the lines of a carrier lower than the local rates are not in violation of the act or any lawful regulation issued thereunder.

One of the questions raised by the evidence is whether the traffic turned over to the forwarder at Chicago is in fact through traffic. The suspended tariff schedules provide that shipments originating at off-line points destined to concentration points or traffic originating at points beyond the distribution point must be reforwarded within 48 hours in the original package. Billing into the concentration point must show the final destination of the shipment and billing from the distribution point to destination must show reference to the carriers bill of lading or manifest under which the shipment reached the distribution points. This appears adequate to assure the traffic moving almost immediately

after receipt at the concentration or distribution points to the final destination. The fact that it is stopped a reasonable time in transit to permit consolidation or breaking bulk appears of little moment so long as the traffic is surrounded by adequate policing regulations to prevent abuse of the tariff. The Commission has on numerous occasions approved rates less than the local rate for movement of cotton in less-than-carload quantities to concentration points for compression which thereafter moved to points beyond in carload quantities. The mere surrender of the lading to an intermediary for the purpose of doing something to the goods shipped is not unusual. It must, therefore, be concluded that the mere surrender of the traffic to the forwarder at the concentration point for consolidation into truckloads or carloads does not break the continuity of the transportation where the original and continuing intention of the shipper was to have the shipment move beyond such point at the time it was turned over to the motor carrier. The same is true at the break-bulk points.

Shippers located at off-line points, appearing in support of the suspended schedules, forcefully insisted that they be permitted to continue to use the coordinated service of the forwarders without increased rates so that they may compete more equally with shippers located in large urban centers who have available the service of forwarders and fast rail merchandise trains in the distribution of their products. Shippers at off-line points cannot ship by rail in competition with those shippers located at urban centers because of the delay in reaching points where the freight will be consolidated by the rail lines in fast merchandise freight trains. Much of this delay occurs at the urban center, such
68 as Chicago, where, if the shipment must be transferred from one rail line to another, delays ranging from 12 to 24 hours occur. Frequently this delay means the difference between a profitable sale and a loss.

The shippers further contend that the forwarders give them a more expeditious and reliable service than is otherwise available. If it is necessary to trace a shipment the forwarders do it without delay. Other transportation agencies do not render as good service in this respect as the forwarder.

The shippers were unanimous in condemning truck transportation where more than two lines are involved or for distances beyond 300 to 500 miles as unreliable and wholly unsatisfactory. They desire to use trucks from or to concentration or breakbulk stations of the forwarders because of the improved service thus obtained. They saw nothing unjustly discriminatory or unduly prejudicial in the suspended schedules or rates and urge their approval by the Commission. Each of these shippers also ship their goods locally by respondent lines.

Whatever may be said as to the necessity of the forwarder service or that transportation agencies should render such service, on this record it must be concluded that the coordinated service of forwarders is not now available either from rail or truck lines, and that the forwarders render a necessary and desirable service.

The most serious question presented in this record is that the suspended rates are made applicable on all freight. These same respondents publish both class and commodity rates which are applicable on both local and interline shipments. The rates are adjusted so that each commodity will bear its fair share of the transportation burden. Consideration in the making of these rates is given all of the transportation characteristics of the various commodities, and the risks assumed by the carrier.

There is inherent in all-commodity rates unjust discrimination and undue prejudice. Only in instances where it is proved that the transportation conditions are unusual or extraordinary should such rates be approved, when at the same time the proponents of such rates maintain either class or commodity rates, or both, applicable on similar traffic. The tendency of all-freight rates is to break down the class rate structure.

In addition to the facts previously discussed tending to show that the conditions affecting the transportation of the particular traffic on which the suspended rates are intended to apply there is another not previously discussed. The respondents operating between Chicago and Wisconsin points maintain a number of commodity rates applicable on less-than-truckload shipments locally between those points, and on interline traffic destined to or originating at points beyond Chicago. They also maintain a large number of commodity rates similarly applicable on shipments of 5,000 pounds and 10,000 pounds. A considerable number of these commodity rates are applicable on the higher-rated articles and are lower than the suspended rates. An exhibit presented shows that, on a wide list of commodities the average percentage ratio of the commodity rates to the normal class rates is 53.6 percent of first class, 54.7 percent of second class, and 65.8 percent of third class. The average percentage ratio of the suspended rates to the normal class or exceptions rating on the same list of commodities is 66 percent of first and second class and 73.7 percent of third class. The facts presented and heretofore discussed are sufficient to establish that no unjust discrimination or undue prejudice will be created if the suspended schedules are permitted to become effective.

On page 8 of suspended tariff MF-I. C. C. No. B-138, in note 2 an attempt has been made to name reduced rates under certain conditions. The note is so ambiguous that it cannot but cause con-

troversy. The note is not phrased with the definiteness required by the existing tariff regulations. It must be canceled.

69 In the same tariff above referred to in section 2, item 35, rates are provided on truckload shipments between Chicago and Milwaukee, Wis. No evidence was offered respecting rates, rules, and regulations named in this item. It is extremely doubtful that the rate of $25 per truck will be compensatory. The application of rates in one instance is not confined to traffic originating at or destined to points beyond Chicago. Item 35 of tariff MF-I. C. C. No. B-138 has not been justified.

The examiner finds that the suspended schedules have been justified except as to note 2 on page 8 of MF-I. C. C. No. B-138 and item 35 of the same tariff, as to which an order will be entered requiring cancelation. As to the remainder of the schedules it is recommended that an order discontinuing the proceedings be entered.

It is recommended that the appended order be entered.

(Signature) A. E. LATER,
Examiner.

Recommended by A. E. Later, Examiner.

(Signature) A. E. LATER.

ORDER

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the — day of —— A. D. 1938.

Investigation and Suspension Docket No. M-247

Proportional Rates Between Chicago and Wisconsin Points

It appearing, That by order dated November 29, 1938, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order, and suspended the operation of said schedules in this proceeding until March 1, 1938, and thereafter respondents voluntarily postponed the effective date of schedules until August 29, 1938;

It further appearing, That a full investigation of the matters and things involved has been made, and that the examiner has made and filed a report containing his findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the order heretofore entered in this proceeding, suspending the operation of said schedules, be, and it is

hereby, vacated and set aside, except to the extent indicated in the findings, and with this exception the proceeding be discontinued.

And it is further ordered, That an order be entered requiring cancelation of note 2 on page 8 of MC–I. C. C. No. B–138 and item 35 of the same tariff.

By the Commission, division 5.

[SEAL] W. P. BARTEL, *Secretary.*

71 In United States District Court

[Title omitted.]

Stipulation as to hearing

Filed Sept. 4, 1939

In this cause, Plaintiffs and the Defendants, by their respective Solicitors, stipulate as follows:

I

The Defendants waive the issuance of process herein and hereby formally enter their respective appearances.

II

This case may be set for final hearing upon the bill as well as upon the application for temporary injunction or stay, as prayed in the bill, on October 9, 1939, at 10:30 A. M., or at the earliest time thereafter that the same can be heard by the Court.

Dated at Washington, D. C., this 7th day of September 1939.

JOHN R. TURNEY,
John R. Turney,
Solicitor for Plaintiffs.
ELMER B. COLLINS,
Solicitor for the United States of America.
EDWARD M. REIDY,
Solicitor for the Interstate Commerce Commission.
FREDERICK E. STOUT,
209 S. La Salle St., Chicago, Ill.,
Local Solicitor for Plaintiffs.

73 In United States District Court

[Title omitted.]

Answer of United States of America

Filed Oct. 9, 1939

Defendant, United States of America:

I

Admits the allegations of the opening paragraph and paragraph I of the complaint, except that it alleges that the cancellation date of October 10, 1939, has been changed to November 10, 1939, by amendatory order of the Commission.

II

Admits that the tariffs referred to in paragraph II of the complaint were offered to the Commission by the plaintiffs, but for more full and complete information as to contents of said tariff, it refers the Court to the tariffs themselves.

III

Admits the allegations of paragraph III of the complaint.

IV

Admits the allegations of the opening paragraph of paragraph IV of the complaint; but it avers that the remaining allegations of said paragraph constitute an attempt on the part of the plaintiff to have this Court weigh the evidence before the Commission and make findings therefrom, functions which are beyond
74 the duty and jurisdiction of this Court, and in further answer thereto alleges that the findings made by the Commission in its report of December 14, 1938, and in its report on reconsideration dated July 29, 1939, attached to and made parts of the complaint as Exhibits B and A, respectively, contain all the findings that it was necessary or proper for the Commission to have made, that such findings were supported by substantial evidence and that these findings justify the Commission's order.

V

Admits that the Examiner, as alleged in paragraph V of the complaint, submitted a recommended report and order, a true copy of which is appended to the complaint as Exhibit C.

VI

Admits the allegations contained in paragraph VI of the complaint.

VII

Admits the allegations of paragraph VII of the complaint.

VIII

Admits the allegations in paragraph VIII of the complaint.

IX

Admits the allegations of paragraph IX of the complaint.

X

Denies each and every allegation of paragraph X of the complaint.

XI

Denies each and every allegation of paragraph XI of the complaint, and in further answer thereto alleges that findings of the Commission in its report of July 29, 1939, were supported by substantial evidence and were sufficient to justify its order.

75 XII

Denies each and every allegations of paragraph XII of the complaint.

XIII

Denies each and every allegation of paragraph XIII of the complaint.

XIV

Admits that the traffic for the purpose of retaining which the plaintiffs published the suspended rates constitutes a large proportion of the traffic and business of some of the plaintiffs, as alleged in paragraph XIV of the complaint, but disclaims information sufficient to form a belief as to whether such traffic would be lost following the cancellation of the suspended rates as directed in the Commission's order and alleges that the allegations of paragraph XIV of the complaint to that effect are immaterial, and further answering allegations of said paragraph denies that the order will cause plaintiffs any irreparable or legal injury.

XV

Admits and alleges, further answering the allegations of the complaint, that in the proceeding out of which the order under review arose, the parties thereto, including the plaintiff herein, were and each of them was accorded a full hearing provided for by the Interstate Commerce Act; that in said hearings a large volume of testimony and other evidence bearing upon the matters covered in said report and order of July 29, 1939, was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of the plaintiffs therein by their counsel; that at said hearing and subsequently, both orally and in briefs filed at said proceedings, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the questions raised by the plaintiffs in this suit.

76 Thereupon the Commission determined said matters and entered and served upon all parties to said proceedings, including the plaintiffs herein, their said reports and orders of December 14, 1938, and July 29, 1939; that said reports and orders included the Commission's findings of fact, decision, conclusions, order, and requirements in the premises, and in the evidence therein and by said reports, the Commission made the findings and stated the conclusions upon which said order was based.

That the findings and conclusions in said reports were and are and that each of them was and is, fully supported and justified by the evidence in the proceedings as aforesaid.

That in making said reports and orders the Commission considered and weighed carefully in the light of its own knowledge and experience each of the circumstances and condition called to its attention on behalf of the parties to said proceedings, by their respective counsel, including many of the matters covered by the allegations of the complaint herein.

That said reports and orders of December 14, 1938, and July 29, 1939, were not made or entered either arbitrarily or unjustly or contrary to relevant evidence, or without supporting evidence; that in making said order the Commission made adequate findings and did not exceed in any way the authority which has been duly conferred upon it; and denies each and all of the allegations to the contrary contained in the complaint.

Denies, except as herein expressly admitted, each of and all the allegations contained in the complaint, in so far as they conflict either with the allegations herein or with either the state-

77 ments or conclusions of fact included in the said reports and orders referred to and made a part of the complaint as Exhibits B and A.

FRANK COLEMAN,
Frank Coleman,
Special Assistant to the Attorney General,
Department of Justice, Washington, D. C.

ELMER B. COLLINS,
Special Assistant to the Attorney General.
THURMAN ARNOLD,
Assistant Attorney General.
WILLIAM J. CAMPBELL,
United States Attorney.

OCTOBER 1939.

79 In United States District Court

[Title omitted.]

Answer of Interstate Commerce Commission

Filed Oct. 6, 1939

The Interstate Commerce Commission, defendant in the above-entitled suit, hereinafter called the Commission, for answer to the complaint states:

I

Answering the opening paragraph and paragraph I of the complaint, the Commission admits the allegations therein contained, except that the Commission alleges that the date October 10, 1939, referred to in the opening paragraph, has been so amended that it should now read November 10, 1939.

The Commission further alleges that it is immaterial, as alleged in paragraph I of the complaint, that "No person or party
80 protested or complained to the Commission against the publication of the aforesaid tariff, but, as hereinafter set out, the same were suspended upon the Commission's own motion."

II

Answering paragraph II of the complaint, the Commission admits that the tariffs therein referred to were offered to it for filing, but for more full and complete information as to the contents of said tariffs, the Commission refers the Court to the tariffs themselves.

III

Answering paragraph III of the complaint, the Commission admits the allegations of this paragraph, but again alleges that it is immaterial that the Commission, upon its own motion, and without complaint of anyone, instituted an investigation concerning the lawfulness of the rates, contained in said tariffs.

IV

Answering the opening paragraph of paragraph IV of the complaint, the Commission admits the allegations thereof. In this connection the Commission alleges that it is immaterial that no person appeared at said hearing in opposition to, or in protest of, any of said tariffs or any of the schedules therein referred to.

Answering the other allegations of paragraph IV, the Commission avers that these allegations constitute an attempt
81 to have the court weigh the evidence before the Commission, which is not the function of the court. The Commission further alleges that the findings made by it in its report of December 14, 1938, and in its report on reconsideration, dated July 29, 1939, attached to and made parts of the complaint as Exhibits B and A, respectively, contain all the findings that it is necessary for the Commission to make, and that these findings justify the order.

V

Answering the allegations of paragraph V of the complaint, the Commission admits that the examiner submitted a recommended report and order, a true copy of which is appended to the complaint as Exhibit C.

VI

The Commission admits the allegations contained in paragraph VI of the complaint.

VII

The Commission admits the allegations contained in paragraph VII of the complaint, and further admits that a true copy of the report of Division V is appended to the complaint as Exhibit B. In this connection, the Commission alleges that the fact that its report and order overruled the recommendation of the examiner is entirely incompetent, irrelevant, and immaterial.

VIII

The Commission admits the allegations contained in paragraph VIII of the complaint.

82

IX

The Commission admits the allegations contained in paragraph IX of the complaint, including the allegation that a true copy of the Commission's report on reconsideration is appended to the complaint as Exhibit A.

X

The Commission denies that its order of July 29, 1939, is invalid for the reasons stated in paragraph X of the complaint; or for any other reason. In this connection the Commission alleges that the questions as to whether the aforesaid tariffs were published, filed, and posted in the manner and form required by law; as to whether the rates, rules, regulations, and practices therein established and provided are just, reasonable, and lawful in every respect, and do not give or cause any undue or unreasonable preference or advantage, are all administrative questions committed to the Commission for determination, and upon which the court will not substitute its judgment for that of the Commission.

XI

Answering paragraph XI of the complaint, the Commission denies the allegations therein contained. The Commission further alleges that the findings made by it in said report of July 29, 1939, are sufficient to justify its order, and that said findings are supported by substantial evidence.

XII

The Commission denies that its order of July 29, 1939, is unlawful for the reasons stated in said paragraph or for any other reason or reasons.

83 In this connection the Commission alleges that its order of July 29, 1939, has been inadvertently referred to in this paragraph as Exhibit F, instead of Exhibit A.

XIII

Answering paragraph XIII of the complaint, the Commission denies that it was its duty to make the findings referred to in this paragraph. The Commission's findings are set forth in its two reports, Exhibits B and A to the complaint, and such findings are, the Commission alleges, sufficient to justify its order and sufficient to justify statutory requirements.

XIV

Answering paragraph XIV of the complaint, the Commission denies that its said report and order are void or that said report and order will irreparably injure plaintiffs. The Commission admits that the traffic which the suspended rates were published by the plaintiffs to retain, constitutes a large proportion of the traffic and business of some of the plaintiffs. The Commission disclaims information sufficient to form a belief as to whether such traffic would be lost following the cancellation of the suspended rates as directed in the order of the Commission. The Commission further alleges that such allegations are immaterial because if the order is valid, as the Commission alleges it is, alleged traffic and revenue losses are not of legal significance.

84 XV

Further answering the allegations of the complaint, the Commission admits and alleges that in the proceeding out of which the order under review arose, the parties thereto, including plaintiffs herein, were, and that each of them was, accorded the full hearing provided for by the Interstate Commerce Act; that in said hearings a large volume of testimony and other evidence bearing upon the matters covered in said report and order of July 29, 1939, was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of the plaintiffs herein by their counsel; that at said hearing and subsequently, both orally and in briefs filed at said proceedings questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the questions raised by the plaintiffs in this suit, whereupon the Commission determined said matters and entered and served upon all parties to said proceeding, including the plaintiffs herein, their said reports and orders of December 14, 1938, and July 29, 1939; that said reports and orders included the Commission's findings of fact, decision, conclusions, order and requirements in the premises, and that, upon the evidence aforesaid and as shown in and by said reports, the Commission made the findings and stated the conclusions upon which said order was based.

The Commission further alleges that the findings and conclusions in said reports were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceeding as aforesaid.

85 The Commission further alleges that in making said reports and orders it considered and weighed carefully, in

the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties to said proceedings by their respective counsel, including many of the matters covered by the allegations of the complaint herein.

The Commission further alleges that said reports and orders of December 14, 1938, and July 29, 1939, were not made or entered either arbitrarily or unjustly, or contrary to relevant evidence, or without evidence to support them, that in making said order the Commission made adequate findings and did not exceed in any way the authority which had been duly conferred upon it; the Commission denies each of and all the allegations to the contrary contained in the complaint.

Except as herein expressly admitted, the Commission denies each of and all the allegations contained in the complaint, insofar as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said reports and orders referred to and made a part of the complaint as Exhibits B and A.

Wherefore, having fully made answer, the Commission prays that the plaintiffs' complaint be dismissed and that the Commission be given such other relief as to the Court may appear just and proper.

INTERSTATE COMMERCE COMMISSION,
By E. M. REIDY, *Assistant Chief Counsel.*

DANIEL W. KNOWLTON,
Chief Counsel,
Of Counsel.

OCTOBER 1939.

86 [*Duly sworn to by Claude R. Porter; jurat omitted in printing.*]

88 In United States District Court

[Title omitted.]

Petition to intervene of freight consolidators & forwarders institute

Filed October 9, 1939

To the Honorable Judges of the District Court of the United States for the Northern District of Illinois:

Petitioner, Freight Consolidators and Forwarders Institute, an unincorporated association, pursuant to leave of the Court here-

tofore granted, files herein a motion to intervene and intervening petition and thereby shows unto this Honorable Court:

I

That petitioner is an unincorporated association of persons and corporations which now are and have for many years been engaged in the business of freight forwarders or consolidators, that is, in consolidating merchandise freight in carload lots, and, in forwarding such freight from various points in the United States to various destinations or distribution points via rail carriers, motor carriers, and water carriers; and that such origin and destination points include Chicago, Illinois, and certain points in Wisconsin, Illinois, and Indiana, respectively, more particularly described in certain tariffs filed by certain motor carriers including the complainants herein with the Interstate Commerce Commission and designated as Agent W. L. Meyer's MF–I. C. C. No. B–138, MF–I. C. C. No. B–142, and MF–I. C. C. No. B–146.

89 II

That by certain tariffs, hereinbefore described, filed to become effective on December 1, 1937, and January 15, 1938, complainants in this cause sought to establish truckload and less than truckload proportional rates to apply on all freight, except certain specified commodities, between Chicago, Illinois, and certain points in Wisconsin, between Chicago, Illinois, and certain points in Illinois and Indiana, and between Evansville, Indianapolis, Fort Wayne, Muncie, and South Bend, on the one hand, and various other points in Indiana, on the other; that these proportional rates are published to apply on traffic transported from the named points, which has arrived at such points as a part of a truckload or carload assignment, for movement beyond over the lines of complainants herein in less-truckload or truckload quantities; or on less-truckload or truckload shipments of freight which move to the named points over complainants' lines for movements beyond as a part of a truckload or carload lots; that the tariffs provide that a period of not more than forty-eight hours will be allowed at any "reforwarding point" named in the tariffs, which are the points named above from or to which the proportional rates are published to apply, and that within this time limit shipments to be reforwarded under the provisions of the tariff must be tendered to the carrier performing the outbound movement from such reforwarding point; and that the rates named in the tariffs would apply generally on less-truckload

quantities subject to a minimum charge varying from 25 to 50 cents, but lower rates on quantities of 10,000 pounds and 20,000 pounds are also provided on all freight between some, but not all, of the Wisconsin points and Chicago; that these quantity rates would apply on shipments delivered to a single carrier in one day for loading on one vehicle consigned to one consignee for one delivery, but the shipments may be from various shippers; and that these quantity rates would also apply on
90 shipments "from one point picked up at one time in one day for loading on one vehicle for delivery to various consignees."

III

That the defendant, the Interstate Commerce Commission, on its own motion and without complaint from any source, suspended these tariffs in their entirety until March 1, 1938, and resuspended them until May 30, 1938; that the complaints herein subsequently voluntarily postponed the effective date of these tariffs until December 1, 1939; that the matter was referred to an examiner and a hearing was had; that a report and recommended order approving the tariffs was issued by the examiner, to which report and order no exceptions were filed; that the Commission on its own motion stayed the order, and subsequently, the Commission, by Division 5, decided on December 14, 1938, reported at 10 M. C. C. 556, that the suspended rates were unlawful, and entered an order requiring their cancellation on or before February 1, 1939.

IV

That upon the petition of the complainants in this cause and this petitioner, the proceeding was reopened by the entire Commission for oral argument and reconsideration, and the order of Division 5 was vacated and set aside; that thereupon Middle Atlantic States Motor Carrier Conference, Inc., Southern Motor Carriers Rate Conference, and an attorney claiming to be representing Class I rail carriers of the western district, intervened in opposition to the suspended rates, and the Racine (Wisc.) Association of Commerce intervened in support of the suspended rates; that operation of the suspended rates was voluntarily deferred by the complainants herein; that the issues presented by the petition for reconsideration were heard, briefed, and
91 orally argued; and that the Commission on July 29, 1939, affirmed its previous finding that the suspended rates were unlawful and entered an order, which was made a part of its report, requiring the complainants herein to cancel the suspended tariffs on or before October 10, 1939.

V

That petitioner was a party by intervention to the proceeding before the Interstate Commerce Commission in which the order hereinbefore described of said Commission was entered, and as such has a right under the Urgent Deficiencies Act of October 22, 1913, 38 Stat. 220, 28 U. S. C. A. Sec. 45a, on its own motion and as of right, to intervene and appear as a party to the above entitled proceeding.

VI

That petitioner represents to this Court and alleges that it has an interest in the matters in litigation in the above entitled cause and seeks and prays the same relief as that which is sought by the complainants herein; that this petitioner further represents to this Court and alleges that its members have a pecuniary interest in the rates and charges which are affected by the order of the Interstate Commerce Commission hereinbefore described; and that unless said order is restrained, enjoined or set aside by this Court, the resulting cancellation of complainants' tariffs, hereinbefore described, will deprive petitioner and its members of economical and desirable transportation arrangements with the complainants, will unduly burden petitioner and its members in the carrying on of their business in the area and between the points, hereinbefore described, will force complainants to exact from petitioners members rates and charges that will be unjust, unreasonable and unjustly discriminatory, and will cause petitioner and its members irreparable injury and damage;

92

VII

Petitioner alleges that the said order entered by the Commission on July 29, 1939, by its terms makes the report of the Commission of that date, a part thereof; that said order of July 29, 1939, is arbitrary, is based on errors of law, is in excess of the statutory powers of the Commission, and that for these reasons that part of said order making a part thereof the finding of unlawfulness in the prior report of the less-than-truckload rates, is null and void, and, further, that said order is null and void because, inter alia, it is not supported by basic findings, is not supported by evidence, and is contrary to the evidence.

That on further support of this petition and as grounds for the relief prayed herein, this petitioner herein incorporates and makes a part of its petition, as though pleaded herein, the pleadings in the complaint filed by the complainants herein.

Wherefore this petitioner prays:

(a) That the Court cause to be entered herein an order permitting this petitioner to file its petition of intervention in the above entitled cause.

(b) That the United States of America, defendant herein, may be required to make full, true, and perfect answer to this petition.

(c) That your petitioner be granted a temporary stay or suspension, or a temporary injunction, restraining the Interstate Commerce Commission and the United States of America from continuing to enforce, pending final hearing herein, the order of the Interstate Commerce Commission hereinbefore described:

(d) That this Court adjudge, order, and decree that the order of the Interstate Commerce Commission hereinbefore described
93 is beyond the lawful authority of the Commission and is without warrant in law, and is null and void. and that said order be enjoined, set aside, and annulled;

(e) That this Court order a due and proper service of this petition to be made forthwith by filing a copy of said petition in the office of the Secretary of the Interstate Commerce Commission and in the Department of Justice of the United States of America; and

(f) That this petitioner may have such other and further relief as it may be entitled to in the premises.

ROBERT E. QUIRK,
Attorney for Petitioner,
Investment Building, Washington, D. C.

Dated October 9, 1939.

Of Counsel,
FREDERICK E. STOUT,
Rookery Bldg., Chicago, Ill.

95 In United States District Court

[Title omitted.]

Answer of Interstate Commerce Commission to intervening petition of Freight Consolidators and Forwarders Institute

Filed Oct. 23, 1939

As its answer to the intervening petition of Freight Consolidators and Forwarders Institute, the Interstate Commerce Commission, hereinafter called the Commission, says:

I

The Commission admits the allegations contained in paragraph I.

II

For more full, accurate, and complete information as to the contents of the tariffs referred to in this paragraph, the Commission refers the Court to said tariffs.

96 III

The Commission admits the allegations contained in paragraph III.

IV

The Commission admits the allegations contained in paragraph IV.

V

The Commission admits the allegations contained in paragraph V.

VI

The Commission admits that intervening petitioner has an interest in this suit, but further answering the allegations of paragraph VI, the Commission denies that unless said order is restrained, enjoined, or set aside by this Court, the intervening petitioner or its members will suffer irreparable injury and damage.

VII

Answering paragraph VII of the intervening petition, the Commission denies that its order referred to therein is invalid for the reasons set forth in said paragraph or for any other reason or reasons.

Wherefore, having fully answered, the Commission prays that the intervening petition be dismissed, the Commis-
97 sion's order sustained and for such other relief as to the Court seems proper.

INTERSTATE COMMERCE COMMISSION,
By E. M. REIDY, *Assistant Chief Counsel.*

DANIEL W. KNOWLTON,
Chief Counsel,
Of Counsel.

[*Duly sworn to by Claude R. Porter; jurat omitted in printing.*]

98 And on, to wit, the 9th day of October, A. D. 1939, there was filed in the Clerk's Office of said Court a certain Certified Copy of Transcript of stenographer's notes of the

hearing held February 24 and 25, 1938, at Chicago, Illinois, before Examiner A. E. Later; and of Exhibits Nos. 1 to 31, both inclusive, filed at said hearing; and Transcript of the stenographer's notes of the oral argument heard February 23, 1939, at Washington, D. C., being items Nos. 7, 8, and 12 of Praecipe, in words and figures following, to wit:

99 [Secretary's Certificate to statement of evidence omitted in printing.]

100 Before Interstate Commerce Commission

I. & S. Docket M-247

Proportional Rates Between Chicago and Wisconsin Points

Statement of evidence

CHICAGO, ILLINOIS, *February 24, 1938.*

Before A. E. Later, Examiner.

Met pursuant to notice.

* * * * *

Appearances

Earl Girard, 608 South Dearborn Street, Chicago, Milwaukee Motor Carriers, Inc., Chicago, Illinois, appearing for Metropolitan Chicago Motor Carriers Conference.

J. R. Turney, 60 Rust Building, Washington, D. C., appearing for Freight Consolidators & Forwarders Institute.

Robert E. Quirk, 1116 Investment Building, Washington, D. C., appearing for Freight Consolidators & Forwarders Institute.

Ferdinand Born, 512 Insurance Building, Indianapolis, Indiana, appearing for Indiana Respondents.

Eugene L. Cohn, One North LaSalle Street, Chicago, Illinois, appearing for Indiana Respondents.

F. J. Knaack, 76 S. Union Station, Chicago, Illinois, appearing for Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company..

P. E. Johnson, Hotel Racine, Racine, Wisconsin, ap-
101-103 pearing for Association of C'mmerce, Racine, Wisconsin and Service Transport Company, Racine, Wisconsin.

J. E. Hansen, 2615 Taylor Avenue, Racine, Wisconsin, appearing for Service Transport Company, Racine, Wisconsin.

P. E. Mogensen, #2 5th Street, Racine, Wisconsin, appearing for Service Transport Company, Racine, Wisconsin.

A. F. Bowman, Racine, Wisconsin, appearing for J. I. Case Company.

Emanuel Paulsen, Racine, Wisconsin, appearing for Walker Manufacturing Company.

R. B. Hall, Racine, Wisconsin, appearing for Marsey Harris Company.

H. J. Bowman, Racine, Wisconsin, appearing for S. C. Johnson & Son, Inc., Racine, Wisconsin.

* * * * *

104 *Colloquy*

Exam. LATER. Are you ready to proceed, gentlemen? The Interstate Commerce Commission has set for hearing at this time and place, I. and S. Docket No. MC-M-247, proportional rates between Chicago and Wisconsin points.

There is also a supplemental order. My understanding of this case is that the question involved is the lawfulness of a proportional tariff published for use in connection with motor carriers and forwarding companies. Is that a correct statement of the issues?

Mr. TURNEY. Not quite.

Exam. LATER. Correct it, please. That is what I want.

Mr. TURNEY. As I understand it, Mr. Examiner, the issue is the lawfulness of a proportional rate on L. C. L. shipments in connection with inbound or outbound carload shipments from or to the break-bulk point, or truckload shipments.

Exam. LATER. All right. Who appears for the respondent?

Mr. GIRARD. Earl Girard, 608 S. Dearborn Street, Chicago, Illinois. I am a registered practitioner appearing for the Chicago-Milwaukee Motor Carriers, Inc., the respondents named in tariff 61-A, W. L. Meyers, MF ICC 331-A, and for the Metropolitan Chicago Motor Carriers Conference, the respondents as named in Tariff No. 65-A, W. L. Meyers, MF ICC B-142.

Exam. LATER. How about representation in the Meyers Tariff No. B-146?

Mr. BORN. I would like at this time, your Honor, to
105 enter the appearance of Ferdinand Born, 512 Insurance Building, Indianapolis, Indiana, and also the appearance of Eugene L. Cohn, No. 1 North La Salle Street, Chicago, Illinois, appearing for the participating carriers in Tariff MF ICC B-146.

I might add also, your Honor, that both Mr. Cohn and myself have been admitted to practice before the Interstate Commerce Commission.

Exam. LATER. Let each person who appears announce whether he is authorized to appear.

Are there any further appearances for the respondents?

Mr. JOHNSON. P. E. Johnson, Traffic Secretary, Association of Commerce, Racine, Wisconsin, appearing for the Racine Association of Commerce and for the Service Transport Company.

Exam. LATER. That is one of the respondents herein?

Mr. JOHNSON. Yes.

Exam. LATER. Are there any other appearances for the respondents?

(No response.)

Exam. LATER. Does anyone appear for protestants?

Mr. KNAACK. F. J. Knaack. Not as a protestant, Mr. Examiner, but——

Exam. LATER. Well, wait a minute; are you going to intervene in this case?

Mr. KNAACK. In so far as our interests may be affected.

Exam. LATER. Well, I will call for that.

106 Let the record show there is no appearance for protestants.

Who appears for intervenors in support of the suspended schedules?

Mr. TURNEY. J. R. Turney and Robert E. Quirk of Washington, D. C. We represent the Freight Consolidators and Forwarders Institute, appearing in support of the tariffs under suspension.

Exam. LATER. Both you gentlemen are admitted practitioners?

Mr. TURNEY. Yes.

Mr. JOHNSON. Mr. Examiner, I would like to be shown on the record as representing an intervenor and not a respondent.

Exam. LATER. All right. Are there any other interventions in support of the suspended schedules?

(No response.)

Exam. LATER. Are there any other appearances?

Mr. KNAACK. F. J. Knaack, appearing for the Trustees of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company in so far as our interests will be affected, and which will be disclosed as the proceedings progress.

Exam. LATER. Of what place?

Mr. KNAACK. Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

Exam. LATER. Are you a registered practitioner?

Mr. KNAACK. Yes, sir.

107 Exam. LATER. Are there any further appearances?

(No response.)

Exam. LATER. Call your first witness.

Mr. GIRARD. Mr. Examiner, I would like to ask permission of the Commission to step out of character and appear in the role of

a witness and I have prevailed upon Mr. Turney to assist in interrogating on direct examination with the permission of the Commission.

Exam. LATER. I have no objection.

Mr. GIRARD. Then I will do so.

Mr. BORN. Before this witness starts, your Honor, may I inquire if it will be permissible to excuse some of these witnesses in the belief that the first witness will be on the stand until noon time, so that these witnesses may go now and come back at two o'clock?

Exam. LATER. Are you asking me to take judicial notice of those facts?

Mr. BORN. I am asking off the record.

Exam. LATER. All right, then. Off the record.

(Discussion off the record.)

Mr. TURNEY. Shall I proceed?

Exam. LATER. Go ahead.

EARL GIRARD was sworn and testified as follows:

Direct examination by Mr. TURNEY:

Q. State your name and address.

108 A. Earl Girard, 8016 Rhodes Avenue, Chicago, Illinois.

Q. What and whom do you do for a living?

A. I am Secretary of the Chicago Milwaukee Motor Carriers, Inc. and the Metropolitan Chicago Motor Carriers Conference, both organizations comprising a membership of approximately 100 motor carriers engaged in the transportation of property by motor vehicle between points in Illinois and points in Wisconsin, also adjoining territory in Indiana, particularly in Lake and Porter Counties, Indiana.

Q. What has been your training and experience for this work, Mr. Girard?

A. I was employed for five years with the Chesapeake & Ohio Railroad Company in various capacities; in local agency accounting, and traffic departments. I was employed for two years as assistant traffic manager for the American Rolling Mills Company. I owned and operated the first highway motor truck service between Cincinnati, Ohio, and Indianapolis, Indiana. I was connected with the Illinois State Code authority for the trucking industry under the National Recovery Administration for two years.

Q. What did you do for that Administration?

A. My title was that of manager of the rates and tariff division of that organization.

Since that time and during the periods of this employment, I have been engaged in private practice in appearances be-
109 fore the Interstate Commerce Commission in rail and motor carrier proceedings.

Q. You have been more or less intimately connected, then, with the motor truck industry for the past ten or more years?

A. Yes, I have.

Q. Will you state briefly what duties you have in connection with these two associations?

A. The purpose of these organizations is: To establish and maintain uniformity of rates and practices, and my duties include the supervision and maintenance of the publication of tariffs and other matters pertaining to regulation under the Motor Carrier Act of the motor carriers in these associations.

Q. Do you have any duties that look towards the analysis of operations for the purpose of promoting financial stability of the members of the association?

A. I have. In addition to the traffic matters that I have just mentioned, we maintain a strict supervision over the financial condition of our carriers, analyzing from time to time their costs, their revenues, their profits, their losses, and keep them informed as to accounting procedure or accounting regulations that may be set up in their operations.

Q. During the period of your experience, I take it, then, that you have done considerable work in an accounting and statistical capacity?

A. I have.

Q. Is it a correct statement, Mr. Girard, to say that you
110 and your staff in these associations constitute the traffic and statistical department, a joint traffic and statistical department of the motor carrier members?

A. Yes, sir; I would say so.

Q. Well, have the respondent carriers in this case any connection with your association?

A. The respondent carriers in tariffs No. 61–A and 65–A all have a connection with our organization.

Q. As members?

A. As members.

Q. Now, so that we may be clear about it, is it clear that all of the respondents, except those appearing in the Indiana tariff, which is 64–A, are members of your association?

A. Yes, that is true.

Q. Are there any members of your association other than the respondents who have any interest in these proceedings?

A. Yes, there are. In fact, each and every one of these carriers have an interest in these proceedings and will be included in any tariff that may finally become effective publishing proportional or concentration rates.

Q. You mean by that, that all of the members of your association will become parties to these or similar tariffs in the event if and when they come effective?

A. That is correct. I might state further that there are carriers who are not members of our organization who operate
111 in a general territory covered by these tariffs. These carriers, regardless of their nonaffiliation, are also included in any tariff published or maintained by members of our organization since it is the purpose of these two organizations to maintain stability and uniformity of rates.

Q. What do you understand to be meant by the phrase "forwarder traffic"?

A. The phrase pertaining to forwarder traffic consists of long haul, less than carload shipments moving partly by rail and partly by truck, which are handled by the carriers called forwarding companies.

Q. Now, dealing with that traffic, the so-called forwarder traffic, will you state what conditions you found when your organization took over the traffic work for the respondents?

A. I found wide dissimilarity in the methods by which the members were participating in the haul of this particular traffic. Prior to April 1, 1936, this traffic was generally handled on a contract basis.

Q. What happened on April 1st besides April Fool's Day?

A. After April 1, 1936, a number of forwarders filed tariffs with the Commission and in these tariffs our members generally concurred. Some of the forwarders, however, did not file tariffs with the Interstate Commerce Commission and there was a disposition upon the part of our members to continue to handle this traffic under contract.

112 Q. What did you do about it?

A. Our members are considered by themselves and by our organization as common carriers. I immediately issued bulletins advising them to discontinue handling forwarded shipments under contract and advised that concurrences in the forwarder tariffs would be the proper procedure in my opinion.

Further inquiry into the situation revealed a wide difference in the practices under which this traffic was being handled. About a year ago I recommended to our members that instead of the divisional system of charges for this traffic that they publish a proportional rate tariff in which the charges and practices would

be uniform with respect to all forwarders and all motor carrier operators.

Q. What was the ultimate result of that recommendation?

A. The publication and filing of the present suspended tariffs.

Q. Now, will you describe very briefly just how the so-called forwarder traffic is handled, particularly that part of it that is handled by the respondents?

A. By a coordinated rail and truck movement, the forwarders' organization gets the traffic, handles it by motor truck to a concentration point where it is consolidated into truckload or carload consignments and moved to a break-bulk point by rail or by truckload operators. At the break-bulk point it is broken down
113 and the individual shipments are moved by truck to the consignee at the ultimate destination.

Q. Well, now, what part of this coordinated transportation do your members perform?

A. They pick up shipments at points on their routes and deliver them to the forwarder stations at Chicago or distribute shipments from the forwarder stations at Chicago to various shippers located on their routes.

Q. Now, you have prepared, I believe, a number of exhibits for this case; is that true?

A. I have.

Q. I think we will have those exhibits distributed.

A. Yes.

Q. Have you prepared, as an exhibit, copies of the three suspended tariffs?

A. I have, and I now offer those exhibits in evidence as my exhibit No. 1, consisting of three parts.

Exam. LATER. Is there any objection to their receipt in evidence?

(No response.)

Exam. LATER. Exhibit No. 1 is admitted.

(Exhibit 1, Witness Girard, received in evidence.)

By Mr. TURNEY:

Q. What is the first tariff in this exhibit?

A. The first tariff is motor freight tariff No. 61–A, issued by Agent W. L. Meyers, MF ICC No. B–138.

Q. Will you state what the second tariff is?

A. The second tariff in this exhibit is Motor Freight Tariff
114 No. 64A, issued by the same agent under No. MF ICC B–146.

Q. And the third tariff?

A. The third tariff in this exhibit is Motor Freight Tariff No. 65–A, issued by the same agent under his MF ICC No. B–142.

Q. Now, the clauses naming the traffic upon which the tariffs are applicable are in each tariff stated in Item 5 and those clauses or those items are identical in all the tariffs, is that correct?

A. That is correct.

Q. Now, will you read into the record Item 5 of the Wisconsin tariff, that is, tariff B-138?

A. Item No. 5 on page No. 6 of that tariff which is Tariff No. 61-A, reads as follows: Under the heading of "Application of Rates" the subheading of this item is entitled, "Rates named in this section apply on."

"(a) 'All freight,' except as otherwise provided in Item 15, which has been transported to the origin station named herein, as a part of a truck-load consignment or carload consignment moving under tariffs or schedules lawfully on file with the Interstate Commerce Commission and immediately reshipped in the original package as an L. T. L. shipment; or

"(b) 'All freight,' except as otherwise provided in Item 15 which is to be transported to the destination station named herein as an L. T. L. shipment, and immediately reshipped in the original package as part of a truck-load consignment or
115 carload consignment moving under tariffs or schedules lawfully on file with the Interstate Commerce Commission.

"(c) For the purpose of this Item, the origin station referred to in Paragraph (a) and the destination station referred to in Paragraph (b) shall be Chicago, Ill."

Now, if I may qualify my original answer, this item reads identically in each of the three tariffs with the exception of the words contained in paragraph (c).

Q. Will you read paragraph (c) in each of the other tariffs so there will not be any confusion about it?

A. Paragraph (c) as contained in motor freight tariff No. 64-A, that is the Indiana tariff——

Q. From here on can we call these Wisconsin, Indiana, Metropolitan and Chicago tariffs, rather than the numbers?

A. Yes.

Q. All right, go ahead.

A. It reads: "For the purpose of this item the origin stations referred to in paragraph (a) and the stations referred to in paragraph (b) shall be Evansville, Ft. Wayne, Indianapolis, Muncie and South Bend, Indiana."

Now, reading from Item 5 in paragraph (c) of Tariff No. 65-A——

Q. That is the Chicago and Metropolitan Tariff?

A. That is correct.

Q. And that is identical with the Wisconsin tariff, is it
116 not?

A. That is correct.

Q. Have you prepared an exhibit which shows the territory and participating carriers and the points served in the suspended tariffs?

A. I have.

Q. Do you offer that exhibit in evidence?

A. I do; and I now offer it in evidence as my Exhibit No. 2.

Exam. LATER. Is there any objection?

(No response.)

Exam. LATER. It is received in evidence.

(Exhibit 2, Witness Girard, received in evidence.)

By Mr. TURNEY:

Q. What does this exhibit 2 show?

A. The first page of exhibit 2 shows a map outling the territory contained in the southeastern corner of Wisconsin, which is commonly known as the extended zone C territory, at those points north of Milwaukee, Wisconsin, and the northeastern corner of Illinois and the entire state of Indiana.

The points circled on the map are the concentration or distribution points into or out of which the traffic is handled under the various tariffs.

Q. Those are the points in paragraph (c) of Item 5 in each tariff?

A. Yes; that is correct.

Q. What territory is covered by the Wisconsin tariff?

117 A. This tariff covers movements between Chicago, Illinois, on the one hand and points in southeastern part of Wisconsin extending from Kenosha, Wisconsin, or, more definitely, the Illinois-Wisconsin State Line as far north as Green Bay, Wisconsin.

Q. Now, the Chicago and Metropolitan district tariffs, what do they cover, or what does that tariff cover, rather?

A. This tariff covers the territory between Chicago, Illinois, on one hand and the territory embraced in an area approximately 50 miles from State and Madison Streets, in Chicago, Illinois.

Q. It is not identical, I take it, with the Metropolitan area prescribed by the Commission?

A. No; it is not.

Q. Is it larger?

A. Considerably larger.

Q. Now, the Indiana tariff covers what territory?

A. All stations in Indiana with the exception of those stations in Lake and Porter Counties, Indiana, which points are covered in the metropolitan area tariff.

Q. What does page 2 of your Exhibit 2 show?

A. Page 2 of this exhibit shows the names of the carriers participating in the Indiana tariff and the third page names carriers who are not at the present time participating in this tariff but who will become parties to the tariff when this suspension is vacated.

118 Q. Each of these carriers is numbered?

A. That is correct. They are all identified by numbers.

Q. Now, what else does the exhibit show?

Exam. LATER. Just one second. Let me ask a question right here.

By Exam. LATER:

Q. You say they are all numbered. Does that numbering correspond to the numbers given them in the tariff?

A. No; they have no designation in the tariff. I will explain that numbering system.

Q. Oh, all right.

A. The fourth and fifth pages of this exhibit lists the towns included within the Indiana tariff and the carriers which serve such towns indicated by the numbers which are assigned to these carriers as shown on pages 1 and 2.

Page 7 of the exhibit contains similar information with respect to the Wisconsin tariff and pages 8 and 9 contain similar information with respect to the metropolitan tariff.

By Mr. TURNEY:

Q. With respect to the Wisconsin tariff, are all participating carriers shown?

A. No. We have shown the names of the carriers, the points they serve, that will participate and become parties to the suspended tariffs when the suspension is vacated.

I might explain further that the participating carriers in the Wisconsin tariff are not all of the carriers who

119 instructed their participation in the tariff.

Q. They are the principal carriers?

A. They are the principal carriers, yes.

Q. Generally speaking, what is the territory covered by the through shipments which these proportional rates are designed to concentrate or distribute?

A. Generally, it covers long distance less carload shipments in both directions, between stations named in the tariff on the one hand and practically the entire United States on the other.

Q. To what extent are short haul shipments involved in these tariffs?

A. Very little. Practically all of the shipments involve hauls in excess of several hundred miles.

Q. You are speaking now of the joint through coordinated haul and not merely the haul by the respondents?

A. That is correct.

Q. Have you prepared a statement showing the respective points of origin and destination of these through L. C. L. shipments which are moving out at through rates of the forwarders in connection with which these proportional rates are published?

A. I am, and I will offer this in evidence as Exhibit 3.

Q. What is the source of this exhibit, Mr. Girard?

A. The principal forwarders have filed tariffs, as I stated before, with the Interstate Commerce Commission. The stations shown in this exhibit were taken from these tariffs.

120 Ordinarily these rates are published by the forwarders in the tariffs at origin or destination other than the points in the territory involved in the suspended tariffs, and for this reason it was impracticable to obtain all of the points.

Exam. LATER. Off the record.

(Discussion off the record.)

Exam. LATER. Let it be understood that where exhibits are offered and no objections are made thereto they will be received in evidence automatically and so marked on the record.

Let the record show at this time that Exhibit 3 is now received in evidence.

(Exhibit 3, Witness Girard, received in evidence.)

By Mr. TURNEY:

Q. To what extent are these through shipments of forwarder traffic being handled to and from stations named in the suspended tariffs?

A. An examination of the freight bills reveals that shipments had moved during the past year to or from practically every station named in the tariff and also included in Exhibit No. 3.

Q. Have you prepared a statement of the volume of the traffic which is moving and which would be subject to the rates named in the suspended tariff?

A. I have consolidated statements obtained from the three principal forwarders of tonnage to and from the points in the suspended tariff, which I now offer in evidence as my exhibit No. 4.

121 (Exhibit 4, Witness Girard, received in evidence.)

By Mr. TURNEY:

Q. What period does this exhibit cover?

A. The year 1937, based upon way bill analysis of the second and third quarters of that year.

Q. You mean that you took the actual tonnage for the two quarters and multiplied it by two?

A. That is correct.

Q. Why did you select the second and third quarters?

A. Those seasons of the year represent a reasonable and fair comparison of the tonnage moving throughout the entire year.

Q. They contain the low and high quarter?

A. That is right.

Q. Now, what is the volume of traffic shown by this exhibit to be moving to and from territories covered by these three tariffs?

A. With respect to the Wisconsin territory there was 14 million pounds moving to or from that territory.

With respect to the Chicago metropolitan territory there was over 126 million pounds moving to or from that territory.

In the Indiana territory there was 90 million pounds, making a total of 257 million pounds of tonnage.

Q. This weight is shown in hundred weight on the exhibit and not in pounds, is that correct?

A. That is correct.

Q. For the purpose of deriving the revenue per hundred weight?

A. That is correct.

122 Q. What were the aggregate charges paid the truck carriers for hauling the traffic which would be covered by the suspended rates?

A. The charges paid our members who are now participating in the Wisconsin tariff and those who have been instructed to participate in that tariff amounted to $133,000, and to those in the Chicago metropolitan territory, $304,000, and to the Indiana carriers in the Indiana territory, $187,000.

Q. What is the total revenue paid to the carriers and which is involved in this proceeding?

A. An amount of $624,000 and that applies only——

Q. That is per year?

A. Per year, and that applies only to those points involved in these tariffs.

Q. This tonnage is the tonnage, I believe you stated, of three forwarders?

A. That is correct.

Q. That is, the three principal forwarders?

A. That is correct.

Q. Are there any other forwarding companies which operate in this territory and whose tonnage is handled by the respondents in this case?

A. There are quite a few more.

Q. Is their tonnage and revenue included in the figures which you have given?

A. No, those figures were not available.

123 Q. Then those figures of $624,000 represent the minimum amount which the respondents have at stake in this proceeding?

A. Yes, it does.

Exam. LATER. That represents the revenues paid during 1937 by the three forwarders named to the carriers similarly situated who have hauled in that territory.

Mr. TURNEY. That is correct.

By Mr. TURNEY:

Q. The other forwarders, how many are there? There are eight or nine?

A. I believe that many.

Q. And some of them are quite large?

A. Yes.

Q. And therefore the tonnage and charges of those forwarders would be a substantial addition to this amount?

A. I do know of my own knowledge there is a considerable amount of tonnage moving via our carriers in connection with these other forwarders other than the three carriers involved in this proceeding.

Q. What are the three forwarders whose statistics you have obtained for this proceeding?

A. I obtained the statistics and figures from the National Carloading Corporation, the Acme Fast Freight, Inc., and the Universal Carload and Distributing Company.

Q. Now, did you also obtain from them the total volume, concentrated or distributed by trucks through their Chi-

124 cago stations?

A. Yes, I did; and you will find at the bottom of my exhibit No. 4, under the heading, "Total traffic concentrated or distributed through Chicago," the total figures representing the total tonnage handled through the Chicago gateway which aggregated in weight 3,526,784 hundred weights.

Q. In pounds that is 350 million pounds?

A. That is right.

Q. And the truck revenue? What was that?

A. The truck revenue, that is $1,178,589.52.

Q. And again, that is the figure of only the three forwarders whom you have named?

A. That is correct.

Exam. LATER. Are you going to show or do you have the information as to the average haul or the 33.42-cent rate?

Mr. TURNEY. Well, we have no figures here. I do not know whether the respondents have or not.

Exam. LATER. No, I mean actually the average haul based on this 33.42-cent rate as shown in the exhibit.

The WITNESS. I might answer that question.

By Mr. TURNEY:

Q. Well, maybe you know. I don't know.

A. It is impossible to determine the average of the 33.42 cents, but we will give you figures pertaining to a very large amount of that tonnage, showing the average hauls involved.

Exam. LATER. That will be all right.

125 By Mr. TURNEY:

Q. But, this tonnage is only the movement of L. C. L. concentration and distribution consignments. It does not include truckload consignments moving from a forwarding station to a forwarding station.

A. No; it involves the so-called distribution and concentration tonnage that our carriers transport to and from the Chicago gateway.

Q. And which will be covered if this tariff is allowed to go into effect or similar tariffs by other tariffs operating into and out of Chicago.

A. That is correct.

Q. This is intended merely to supplement the three territories involved in the three particular tariffs here?

A. That is correct.

Q. And in your judgment the other tariffs are similar in the distance from Chicago as these territories are slightly longer hauls.

A. That is correct.

Q. Now, will you describe in somewhat greater detail the condition under which this forward traffic, which is involved in these suspended tariffs, was formerly handled by the respondents?

A. Prior to April 1, 1936, the traffic was handled on agreed contract rates.

Q. And I believe you stated on April 1, 1936, that it was then covered by through forwarder rates in which the respond-

126 ent concurred?

A. That is correct. Our carriers on April 1, 1936, concurred in the tariffs published by the freight forwards and filed with the Interstate Commerce Commission and also filed copies of contracts between themselves and the forwarders, which fixed the division or the basis upon which the charge of the motor carrier was made. As stated, because of the differences and variances in these arrangements, I recommended some months ago that they be made uniform and be published as a tariff with the Commission.

Q. Were there any other unsatisfactory phases of the situation which led to the publication of these tariffs?

A. Yes; there was. In addition to the lack of uniformity there is the great uncertainty with respect to the forwarders' status.

Q. You mean under the Motor Carrier or Interstate Commerce Commission Act?

A. That is correct. Doubt as to the proper method of publishing charges covering the trucker's participation in the forwarder traffic and from the conflicting and confusing information and advice that we have been receiving from representatives of the Commission, we have been somewhat in a quand'ry as to just what was the proper procedure to follow in handling this.

Q. Well, that conflict and confusion arose, naturally, out of the uncertainty with respect to the forwarders' status, did
127 it not?

A. That is correct. My statement is not made with any purpose of reflecting on the commission. I suppose they are as confused as we have been.

Q. To what extent was this movement to publish this proportional rate system initiated or instigated by the forwarders?

A. It was instigated by myself. As a matter of fact, since April 1, 1936, I have contacted the various forwarders with the view of establishing the proportional tariffs. At first I was somewhat puzzled myself as to whether it was the right procedure and we continued participation in the tariffs or the division arrangements by contracts, and our participation in the tariffs of the forwarders. Until some time in the month of July 1937, at which time the Interstate Commerce Commission in the Acme case used a language that convinced me that in the interest of our carriers, the proper procedure was to file proportional tariffs.

Q. Now, will you say just what you mean by the proportional-rate method of publishing these rates?

A. It is simply a publication as a separate rate on our part, that is the motor carrier, of the through rate, to compensate us for our part of what is in fact a joint through movement.

Q. Is it restricted to forwarders or does the tariff apply to anybody whose shipments are moving under the same or like conditions?

128 A. No; it is not restricted. It embraces any less carload shipment which is moved into a break-bulk point, or which is intended to move out of a concentration point, as a part of a truckload or carload consignment when the less carload and carload or truckload movements are practically continuous.

Q. Is this an unusual method for the carriers to publish rates?

A. Decidedly not. It is one which has been followed by the railroads with the approval of the Commission.

Q. As a matter of fact, it existed before the Commission, didn't it?

A. It antedated the Interstate Commerce Commission Act.

Q. Have you prepared an exhibit showing typical examples of railroad proportional tariffs similar in principle to the tariffs under suspension?

A. I have. I have a statement of typical examples of well known proportional rates published under conditions similar to those under which the suspended tariffs were published and I now offer it in evidence as my exhibit No. 5.

(Exhibit 5. Witness Girard? received in evidence.)

By Mr. TURNEY:

Q. What, generally, does this exhibit show?

A. It shows, with the appropriate ICC tariff reference, instances in which railroads have published proportional rates on many different kinds of classes and commodities from our two points at which the traffic has been concentrated or dis-
129 tributed either by rail or by other means of transportation, public or private.

Q. Do these proportional tariffs attempt to control or restrict the movement beyond the points covered by the proportional rate?

A. No; they govern only the direct movement covered by the proportional rate and do not restrict or limit the movement by which the traffic may be concentrated at the point of origin or distributed from point of destinations shown in the tariffs.

Q. On that point, Mr. Girard, do any of these tariffs restrict or require that the property be continuously in the possession of a carrier and particularly a carrier subject to the Interstate Commerce Commission Act?

A. No. It will be observed that all that is necessary to make the proportional rather than the local rates applicable is that the commodities move from the territories and reach the points of concentration by any methods or means of transportation and in any quantities.

Q. Now, let us take some typical examples shown here. Turn to the fourth tariff listed on Page 5, and comment on that briefly, if you will.

A. On page 5 of this exhibit, the fourth entry from the top shows a territory application from Dallas, Texas, to Abilene, Texas, and the commodity is dry goods N. O. S. This description is incorrect and the tariff describes and applies to com-

130 modities generally. I might say that the provisions are identical in principle in connection with this particular rate as they are in the suspended tariff.

Q. And very similar language, is it not?

A. Very similar.

Q. Isn't it also true that this applies generally over the entire state of Texas and not merely Abilene, Texas?

A. That is correct, and these two points have been merely shown in the exhibit to indicate the territory in which they do apply.

Q. To be a little more specific, this tariff you are discussing applies under its provisions to L. C. L. shipments which have moved into Dallas as a part of a carload shipment and there broken bulk and moved out by the same carrier as an L. C. L. shipment?

A. That is correct.

Q. And that is exactly what your tariff here provides?

A. The suspended tariffs have practically identical language, identically similar wording application.

Q. Except that this particular tariff is a rail tariff and provides for distribution by the railroad of the L. C. L. shipment?

A. That is correct.

Q. Just like your tariff provides for distribution by the trunk line?

A. That is correct.

131 Q. Now, let us turn to page 8 of this exhibit, which is a dairy concentration tariff, and tell us about that.

A. With respect to page 8 of Exhibit No. 5, which is a tariff reference and application taken from a rail tariff of a rail carrier, namely, the Chicago & Northwestern Railroad in I. C. C. 10585, this tariff is specific in its application and provides for concentration and transit privileges on butter, eggs, frozen cream, poultry, and rabbits.

Q. It really provides for concentration of L. C. L. shipments of what amounts to proportional L. C. L. rate when subsequently reshipped in carload quantities?

A. That is correct. That is the exact application of that tariff.

Q. Now, let us go to another, down south, in Dixie. What about the cotton concentration tariff shown on page 11?

A. With respect to page 11, this exhibit, these tariffs provide for rates on cotton on bales—

Q. That is in L. C. L. quantities?

A. In L. C. L. quantities into the compress point, and further provision for consolidation at the latter point into carload lots moving at a carload rate. It applies on cotton moving into the

compress point in bales from a large number of different origin points within the scope of the tariff.

Q. Now, let us go back to page 4; what have you got to say about the ex-lake grain rates from Buffalo to Baltimore and other Atlantic Seaboard points shown on this page.

132 A. Both with respect to this it will be observed that all that is necessary in connection with the application of this rate to make the proportional rather than the local rates applicable, is that the grain, the ex-lake grain—it can reach Buffalo in canoes or in any other means of water transportation, and further than that, there is no provision in this tariff restricting the inbound quantities, whether it be in buckets or a full steamer cargo.

Q. Is there any restriction on the kind of a carrier, whether it be public carrier, common carrier or private carrier?

A. No. The rate would be applicable if the tonnage was brought in by a private carrier and likewise applicable by the public carriers.

Q. So, as a matter of fact, particularly with respect to the coal rates shown on pages 2 and 3, and similar in character, a large amount of it is brought in by private carrier?

A. Yes. Practically all of the larger steel companies own their own coal and ore boats.

Q. And that is also true of grain?

A. That is correct.

Q. Did you find any tariffs of motor carriers which have been filed with the Interstate Commerce Commission, which also provide proportional rates similar in principle to the rates herein involved?

A. Yes, we have, and I have shown these on pages 9 and

133 10 of this exhibit.

Q. Will you look at page 9 of this exhibit No. 5, at the tariffs shown on the bottom of the page, Southwestern Motor Freight Lines; is that tariff and provision identical with these tariffs and with the rail tariff applying from Dallas to Abilene on all freight in L. C. L. lots which has moved into the brake-bulk points in carload lots?

A. Yes; they are identical.

By Exam. Later:

Q. That is, the suspended tariffs and provisions of this tariff are identical?

A. No. The rail tariff that is referred to in that exhibit and the motor carrier tariff are identical.

By Mr. TURNEY:

Q. Well, isn't it also true that they are practically identical with the provisions of the suspended tariff?

A. Oh, yes; indeed. They are also identical, but to make myself clear, the wording on page 9 in exhibit 5 is identical with the wording contained in the rail tariff in that particular territory and likewise is practically identical with the wording in the proportional tariffs that are under suspension.

By Mr. QUIRK:

Q. Mr. Girard, in other words, this tariff you have just been describing is the same in principle and same in its application and same in purpose as the suspended tariffs, is it not?

A. Yes; it is.

By Mr. TURNEY:

Q. Have you prepared an exhibit which compares
134 the present through rates, of which the suspended rates are factors, with the through rates between the same points published by the rail tariffs?

A. I have; and I now offer it in evidence as my exhibit 6.

(Exhibit 6, Witness Girard, received in evidence.)

By Mr. TURNEY:

Q. Will you describe briefly this exhibit?

A. This exhibit compares the applicable through rail less than carload rates between typical points in the United States upon the one hand and the more important stations in the suspended tariffs upon the other hand. It also shows the forwarder joint rates between same points and also named in tariffs on file with the Interstate Commerce Commission.

In addition to this information the exhibit shows the divisions of the through rail rates to the carriers performing the services between Chicago and the points involved in the suspended tariffs, comparable with the services for which the suspended rates were published and also the suspended rate.

Q. Now, with respect to the through rail and forwarder rates, are they comparable?

A. The joint rates published by the forwarders and respondents are identically the same as those published by the railroads, which rail less than carload rates were prescribed by the Interstate Commerce Commission in class rate investigations.

Q. In other words, the through rates charged by both types of carriers are rates which were initially prescribed by the
135 Interstate Commerce Commission?

A. That is correct.

Q. Now, how do the suspended proportional rates of these motor carriers compare with rail divisions of the through rate which go to the railroads performing identically the same service beyond Chicago?

A. The suspended proportional rates are approximately on the same level as the rail divisions for the average of the less-than-carload classes.

Q. By that you mean the rail divisions vary with each of the L. C. L. classes, whereas the division which is in the suspended tariffs, or, rather, the rate in the suspended tariffs is for all classes?

A. That is correct.

Q. And the average of the second- and third-class rates approximates the suspended rate here?

A. That is correct.

By Exam. LATER:

Q. Now, just one question before you go further. It says there from Appleton, Wisconsin, to Buffalo, New York, 40 min. 40. What does that mean?

A. That means the rate is 40 cents per hundred pounds, and the minimum charge for our portion of the haul is 40 cents per shipment. And I might say further that if the shipment weighed 10 pounds, our carrier would receive 40 cents for it.

By Mr. TURNEY:

Q. Now, you have a lot of figures on here that you call
136 the rail divisions beyond Chicago. In all cases are they the actual rail divisions?

A. No, I was unable to obtain the intra-territorial divisions of the rail carriers' divisions and opposite the rail divisions shown on this exhibit where an asterisk is shown, they were computed on the first-class rate prorate, which I understand is generally the basis for determining such divisions, and that it is the most favorable basis of determining the divisions insofar as the short-haul carrier is concerned.

Q. You mean by that, that because of the relatively higher rates for the shorter distances that a rate prorate division is much more favorable to the carrier having the shorter haul than a straight mileage prorate would be?

A. That is correct.

Q. And I assume that, representing short-haul carriers, you try to get a rate prorate wherever you can, don't you?

A. That is correct.

By Exam. LATER:

Q. Where you have no asterisks, however, that means you get the actual divisions?

A. That is correct.

By Mr. TURNEY:

Q. In most cases, Mr. Girard, aren't those divisions, where there are no asterisks, if they are in the territorial divisions, the result of a division decision of the Commission?

A. That is correct.

Q. How do the proportional rates named in the suspended tariffs compare with the past and present charges
137 of the respondents for the same service?

A. They are identical with the charges which have been in effect by these carriers either under contract or as a division of a through rate for the past eight years.

Q. Now, coming to the comparative side of the matter; what difference, if any, is there in the service required of the respondents for handling traffic that will be subject to these suspended tariffs and the handling of their ordinary local traffic?

A. The forwarder traffic is more comparable from the standpoint of service with that of the interline or interchange shipments or traffic. It is dissimilar from the local traffic in that one less complete terminal service is required than for the local traffic.

Q. Now, will you explain just how that happens?

A. The truckman's local traffic moving from Chicago to stations named in the tariffs, or vice versa, involves a pickup or delivery in the City of Chicago by local truck. Generally they are under a contract and also a handling over the carriers' platform at the station in Chicago is necessary and from there it is loaded into over-the-road or line haul trucks.

In connection with the forwarders' traffic, however, all the shipments for any given truck schedule are segregated at one time, which makes it possible for the operator to stop
138 his road haul or over-the-road trucks at the station of the forwarder, pick up the entire shipment and continue on his journey.

Q. What effect does this have?

A. This process of handling eliminates entirely one terminal cost.

Q. Now, have you made an analysis of the revenues and expenses of the traffic which will be handled under the suspended tariffs?

A. I have. I now offer in evidence my Exhibit 7, which contains an analysis of two typical motor operators handling traffic which is involved in our Chicago metropolitan area.

(Exhibit 7, Witness Girard, received in evidence.)

By Mr. TURNEY:

Q. Why did you select these two particular tariffs?

A. For this reason: That it was impossible, within the time which I had, to analyze the records of our all carriers. Furthermore, the records of some of our carriers, particularly the smaller ones, were not in sufficient detail to permit the analysis that was necessary in this instance. I selected two tariffs having aggregate operating expenses of over $400,000.

Q. That is a little less than $400,000 to be exact, isn't it? It is $386,000, shown on the exhibit, I believe?

A. I should have stated approximately $400,000 and not over $400,000.

139 Q. Now, the summary of this exhibit is shown on the first sheet, is it not?

A. That it correct.

Q. Now, will you explain briefly just what that summary shows?

A. The summary on the first half of this page is a recapitulation of expenses. That is for the two carriers as shown. It shows that during the year 1937, these two carriers handled a total of 259 million pounds of freight at an average total operating expense of approximately 15 cents per 100 pounds, or 23 cents per truck mile, and that the carriers on an average made a profit of 9.8 cent per 100 pounds on the traffic handled for the forwarder.

Q. Will you explain just how you made this study?

A. Our motor carriers' services within the metropolitan area which we have explained extends in a radius of approximately 50 miles of Chicago, is nothing more or less than an extended terminal pick-up and/or delivery service. All points, as we stated before, are located within practically 50 miles of Chicago.

In the study of these two carriers, therefore, all that was necessary was to divide their total operating expenses, direct and administrative, by the total number of hundred pounds handled and the number of truck miles and other break-down involved in the operation. These unit costs are shown on page 5 in the
140 case of a Chicago, Illinois trucking company, and on page 3 in the case of the Elgin Storage and Transfer Company.

Q. What effect did this method of dealing with the entire costs have upon increasing or decreasing the relative costs of handling the forwarder traffic?

A. It overstated the cost of handling this particular type of traffic?

Q. Why?

A. Because it takes into consideration the savings incidental to the elimination of one terminal handling in Chicago, which is generally the case in connection with the handling of forwarder traffic.

Q. As you have already explained.

A. That's right.

Q. Did you make any comparison of the revenue received by these carriers from the various classes of traffic?

A. Yes; I did. You will observe on page 7, in that portion of the exhibit which relates to the Chicago Heights Trucking Company and on page 6 in that part of the exhibit relating to the Elgin Storage and Transfer Company——

Q. Deal with the first one on page 7, the Chicago Heights Trucking Company.

A. With respect to that I made a very complete analysis of all shipments handled for a five day period in the month of April 1937. That was a freight bill analysis. The traffic
141 received by these carriers from other motor carriers on joint through rates or movements paid an average rate of 10.5 cents per 100 pounds. The local traffic—and when I say local traffic, I mean that traffic that originates and terminates on the line of the carrier—18.6 cents per 100 pounds. And the traffic handled in connection with the forwarder at rates identical with those that are now contained in the suspended tariff, 24.7 cents per 100 pounds.

The average revenue received per stop from the joint line motor carrier traffic was 72 cents. From the local traffic, $1.04, and from the forwarder traffic, $1.83.

Q. Do you consider the statistics with respect to the revenue per stop significant?

A. I do, and in fact, in connection with our so-called short haul carriers, particularly those operating in the metropolitan area of Chicago, the primary factor of cost is involved in the stop. The more shipments that can be handled with the lesser number of stops, the more earning power for the carrier.

Q. The less miles operated, the less hours a truck operator consumes.

A. In fact, there is an entire reduction in operating costs all the way down the line.

Q. And on that basis the forwarder traffic is much more remunerative in the case of this carrier.

A. Yes; it is.

142 Q. Well, now, turn to page 6 concerning the Elgin Storage and Transfer Company and tell us what that shows.

A. With respect to the commodity contained on page 6 of this exhibit, which pertains to the Elgin Storage and Transfer Company operation, it will be observed that the average rate received from the connecting lines was 17.7 cents; from local traffic, 26.9 cents; and from forwarder traffic, 27 cents.

Q. That was per 100 pounds?

A. Each of the figures represents 100 pounds. The average revenue per stop of connecting line trucks was 88 cents; local traffic, 99 cents; and forwarder traffic, $15.34.

Now, may I explain that figure of $15.34? In the instance of some of our carriers where they serve shippers who ship large numbers of shipments to various points in the United States, it is generally the practice to pick up these shipments, particularly when we have an outlet such as a forwarder to transfer to for connecting line haul. The advantage gained in this particular process is that we pick up these large number of shipments at one trip and by transferring to the forwarder we also have the advantage of making—oh, I would say one or two deliveries at the most.

Q. In other words, it practically amounts to a semi-truckload movement.

A. In fact, that is what it is.

143 Q. Now, from a traffic revenue standpoint, what conclusion do you draw from these two statements or these two analyses?

A. That the forwarder traffic pays relatively higher rates than any of the other traffic handled by these carriers and since the proposed rates are identical with those now being used, it will continue to do so.

Q. In other words, these proposed rates will give the respondents more revenue, relatively, than they receive from any other traffic, including their own local traffic?

A. That is without a doubt true.

Q. Now, will you turn to page 5 of the Elgin Storage and Transfer Company Exhibit?

A. That is page 5.

Q. Yes. What have you done on that page?

A. On page 5 of this exhibit in connection with the Elgin Storage and Transfer Company, we have listed thereon the principal towns served by the Elgin Storage and Transfer Company in their pick-up and delivery service within this 50-mile area. We have shown there the proposed rate which we do not consider proposed; it is really the rate we published.

Q. It is the rate you are now charging?

A. It is the rate we are now charging, yes; taken from the tariffs that are under suspension.

The next column under the heading of cost, shows the figure determined as the total cost of handling traffic as contained in this exhibit.

144 Q. Including two terminal services?

A. Yes; including all services. And it will be observed that the total cost of operation as compared with the rates we are now receiving and the rates that are now under suspension in all instances produced more than our cost for providing that particular service, taking into consideration that we haven't shown the advantages in this cost of the one pickup and one delivery involved in carload traffic.

Q. The same information, I think, it shown on the unnumbered page with respect to the Chicago Heights Trucking Company.

Exam. LATER. Just read that last statement, Mr. Reporter, that Mr. Girard made.

(The last answer of the witness was read.)

By Mr. TURNEY:

Q. The cost shown as $.15678 includes a pickup and delivery, whereas the service involved in connection with the traffic for which these rates are published involves only one such service, that is either a pickup or a delivery, but not both.

A. That is correct.

Q. Now, have you prepared a similar cost *cost* analysis with respect to the Wisconsin territory?

Exam. LATER. Before we start that, I think we will take a recess until two o'clock.

(Whereupon at 12:15 o'clock P. M., adjourned to 2:00 o'clock P. M.

145 AFTERNOON SESSION, 2:00 P. M.

Exam. LATER. Are you ready to proceed, gentlemen?

Mr. TURNEY. If the Commissioner please, I desire to withdraw the witness Girard temporarily in order to give Mr. Quirk an opportunity to put on some witnesses who desire to leave.

Exam. LATER. That is satisfactory with me.

H. F. C. BROWN was sworn and testified as follows:

Direct examination by Mr. QUIRK:

Q. Mr. Brown, will you state your name?

A. H. F. C. Brown.

Q. Where do you reside?

A. Racine, Wisconsin.

Q. What is your business?

A. I am traffic manager for the Western Printing and Lithographing Company and subsidiary companies.

Q. What is the nature of the business of that company?

A. It is a manufacturing concern that manufactures books, games, greeting cards, and playing cards. I might go on a little further. They are also job printers doing commercial work.

Q. Does your company ship traffic to and from Racine?

A. Very extensively.

Q. Does that traffic include less than carload traffic?

146 A. It does.

Q. Will you describe briefly the extent of your less than carload traffic by year?

A. We will run a minimum of at least one trap car per day and in the busy season we will go two and three trap cars per day, these cars being made up at Proviso, which is the Northwestern yards here in Chicago, and most of the merchandise in these trap cars we try to consign to destinations where they make through cars out of Chicago. It often happens, however, we will get merchandise into these cars to destinations where there is no overhead traffic sufficient to make up a car from the Northwestern in Chicago and therefore the merchandise will go over to the connecting line and there will be at least a twenty-four hour delay in moving the merchandise out of Chicago and thereby the merchandise which we have, which is a quick selling merchandise, sold mostly in what is known as dime stores, will meet with delays, the merchandise will be delayed in getting on the shelves of these respective stores, and that will oftentimes result in the loss of sales for the people to whom we sell.

Q. In other words, is expedited transportation service essential to your business?

A. Our selling primarily depends on that kind of service. It is one of the main factors in the selling of our merchandise.

147 Q. What railroad service serves Racine?

A. We have the Chicago & Northwestern serving our main plant at Racine.

Q. What means of transportation do you usually use in connection with your outbound shipments, less than carload shipments?

A. I just mentioned the trap-car movement. The trap-car movement with us is not sufficient to distribute our merchandise throughout the United States. We therefore have, since 1929,

been using car-forwarding companies and the service which they have to offer is a very expeditious service, very essential to our business, and we use them very extensively.

Q. Do you use that more extensively than you do the trap-car service?

A. I will have to do a little figuring on that. I haven't the exact tonnage but I think I can probably get a fairly close answer out of it. I would say that the carload movement is about double the truck-car movement.

By Exam. LATER:

Q. The what?

A. That is the movement via the carload-forwarding companies is about twice that which we use of the railroad trap-car service.

By Mr. QUIRK:

Q. Are the rates which you pay to the forwarding companies and the trucking companies—there is a combination there, is there not?

148 A. There is a through rate out of Racine to the ultimate destination which is practically identical with the rail rate.

Q. To practically all points?

A. To practically all points in the United States.

Q. Despite the fact that the rail rates from Racine to given destinations and the forwarding rate to the same destinations, are the same, you use the forwarding service more than the railroad service?

A. If my computations are correct, I would say about twice as great with the forwarding companies than with the trap cars.

Q. Now, do you mind stating what your annual shipments of less than carload freight are in pounds? You need not do so if you do not want to.

A. I made up an exhibit which was taken from our records. I think the exhibit has been passed around. I ask that it be identified by No. 11.

Exam. LATER. Yes.

The WITNESS. It is a statement of our L. C. L. freight shipments made via carload companies and subsidiary companies of Racine, Wisconsin, during the year 1937. That figure is given in pounds and it is 6,102,800 pounds. That is during the year 1937.

I also broke it down into shipments of one month.

By Exam. LATER:

Q. What was that figure?

A. 6,102,800 pounds.

149 Q. That is the total movement?

A. That is the total movement of L. C. L. tonnage for the forwarding companies. That is from the one industry there in Racine. That is the Western Printing and Lithographing Company and its subsidiaries.

I might explain the meaning of the word subsidiaries. The Western Printing and Lithographing Company is the manufacturing Company and working with them through the sales organization is what is known as the Whitman Publishing Company and the Western Playing Card Company.

During the month of September, 1937, via the car forwarding companies we made 2,347 shipments of L. C. L. freight amounting to 697,551 pounds. That is an average of 90 shipments per day, figuring 26 shipping days. I omitted Sundays and that is why I am taking 26 shipping days. That includes Saturdays.

These shipments were made to 37 States and British Columbia and to these various States and British Columbia there were 440 destinations.

I touched slightly a few minutes ago on the necessity of rapid transportation. This probably might not be appropriate, I am not trying to do any advertising, but we are getting out a book called, "Snow White and the Seven Dwarfs." In six weeks' time we have gotten out over three million copies of that book and the day before yesterday we were 500,000 copies behind in our orders.

150 In this picture, the moving picture people of Hollywood have given us an itinerary of where these reels are to be shown and we have to get these books to the various dime stores throughout the United States prior to the showing of these reels. That is part of the contract. We cannot depend upon trap car service and to be sure that this merchandise will be at destination we operate very closely and, as I said, we are 500,000 copies behind now. One press alone will turn out 50,000 copies per day, so we have to avail ourselves of the service of the car forwarding companies. We are always sure of merchandise moving out of Chicago within twenty-four hours after it leaves our plant, and it is very essential to the selling of our merchandise to have the car forwarding companies in existence.

By Mr. QUIRK:

Q. Well, now, unless you have some other statements to make, those are all the questions I have to ask.

EXAM. LATER. Are there any other questions?

MR. TURNEY. If the Commissioner please, in order to save confusion in Mr. Girard's testimony, may I offer the remainder of Girard's exhibits now and then start this exhibit that the witness

Brown has just referred to, start that at the end of Girard's exhibits?

Exam. LATER. Yes. Give their numbers.

Mr. TURNEY. I would like to offer at this time Girard's Exhibit 8, which is the analysis of revenue and expense of
151 proposed service to Wisconsin tariff points, and his Exhibit 9, which is the analysis per hundredweight of through charges on the traffic involved. Those are the only two exhibits he has left and they will be discussed when he resumes the stand.

Exam. LATER. Then Mr. Brown's exhibit will be No. 10.

Mr. TURNEY. That is right.

Exam. LATER. All right, then let the record show that Girard's Exhibits 8 and 9, and Brown's Exhibit 10 are received in evidence.

(Exhibits 8 and 9, Witness Girard, and Exhibit 10, Witness Brown, received in evidence.)

The WITNESS. I would like to go on a little bit further regarding the plant at Racine.

We have on the average there about 1,000 employees throughout the year, and we are very favorable to the car forwarding companies, as I previously stated, for the service they are able to give us. I think that there is a very decided feeling for car forwarding companies. No doubt some other witness will testify as to the extent that they have engaged that servic , that transportation. We have used them extensively since 1929. I firmly believe and have been of that belief for some time that there is a very decided field for this motor transportation and I would very much dislike to see any order issued which would deprive the carloading
152 companies of the opportunity of serving what is known as off-line shipping points. It would seriously affect our being able to merchandise our material throughout the United States.

By Exam. LATER:

Q. Is that all?

A. That is all.

Mr. TURNEY. I would like to ask some questions.

Exam. LATER. All right.

Cross-examination by Mr. TURNEY:

Q. Mr. Brown, to what did you attribute the superior service which the forwarding companies give? Do you attribute it to the fact it is coordinated rail and truck service that makes it unnecessary to operate merchandise cars to all small points?

A. I think it is not a physical impossibility for the railroads to make-up through cars to every destination, but from an operating standpoint it is absolutely impossible for them to do it. The carloading companies have come into the picture and have taken

up the slack there and they make overhead cars to a great many more destinations than the straight rail movement. From my experience with them and having observed their system of checking and tracing, the company I represent is able at all times to depend on their service, and if we get a hot wire, "Where is our shipment," we can immediately get in touch with the car-forwarding companies and get definite information of where that L. C. L. shipment is at that specific time, and as such we
153 are able to rely on that information and we can relay that information on to your customer and he knows definitely when his merchandise will be at a specific destination and when he can put it on his shelves, and can go ahead and make sales.

Q. Do you find that the system which the forwarding companies use of combining truck haul at origin, such as from Racine, rail carload or truckload consignment, and then distribution to the small points by truck, gives a better service than could be obtained generally by either the railroads or the truck lines?

A. You have set-up on the rails with that system a through-car movement to key points which, you might say, is your main trunk line. You have feeders going into that trunk and feeders going away from it, and it is a definite service which can be controlled at all times.

Q. And it is superior to either service by itself?

A. Yes. Your short-haul trucking is absolutely controlled, your carload movement is also absolutely controlled and, having your feeders into your main artery in that way, you have got what I think is a very ideal situation for transportation of L. C. L. freight.

Q. Well, now, looking at the situation a moment from the commercial or business standpoint, would the competitors, say at a large city such as Chicago, have an advantage over people
154 located in a city the size of Racine in service if it were not for some such coordinated system as this, which equalizes that service?

A. I maintain that a buyer of merchandise is entitled to more than one source of supply. Where you have your sources of supply scattered, the transportation system should be set-up so as to promote competition and get your merchandise there at a reasonable cost.

Q. Well, what I was getting at was this: Without the forwarder service, isn't it a fact that shippers at cities like Racine would be at a decided disadvantage with shippers of cities the size of Chicago where through cars can be made?

A. Well, I know from my own experience with the company I represent that twenty-four hours has meant loss of sales to us

and where we are not able to get our merchandise into Chicago except by trap cars and gambling on getting it out the next day and then finding out it would be twenty-four hours late, it would be a very serious situation as far as we are concerned for the distribution of merchandise.

Q. And if the forwarder service to Racine was withdrawn, it would be of a decided disadvantage to shippers there?

A. Absolutely.

Q. That is all.

By Exam. LATER:

Q. The last question brought up a point with me. Is there any factor of saving to you in transportation charges by
155 the use of the forwarder in this hot merchandise, shipments that have to be moved expeditiously?

A. Mr. Examiner, the rates are all published in the tariffs and I am not for any chiseling of rates.

Q. No; you do not get what I mean. If you were having to ship these shipments as L. T. L. or L. C. L., are the forwarders' rates, as a matter of fact, the same as or lower than—I mean on your traffic——

A. I understand what you mean. The forwarders' rates out of Racine to the best of my knowledge are identical with rail rates except possibly two or three cents differential on the west coast. I haven't the tariff here and I cannot say definitely, but that is from memory. I would rather have a rate man testify to that.

Q. Well, that is all right. It is approximately the same in all cases.

A. I think off the record here I can stand on the statement that there is no difference between the forwarding rates and the straight rail rates on L. T. L. traffic.

Q. Now, understand this is a case involving proportional tariff that the truckers are going to use in connection with forwarders. Do you find any advantage in the delivery of your freight when it is handled by truck to the concentration points and thence by a forwarder over a through truck movement, say for a distance as far as Pittsburgh? Just take Pittsburgh for example.

A. I am not interested in any truck movements to Pitts-
156 burgh. I would not use truck movements to Pittsburgh.

Q. You would not move them?

A. No, sir. It is beyond control.

Q. It is beyond control?

A. Yes.

Q. You must have control of your shipments so that you can locate them at any moment.

A. Pardon me for interrupting, but you cannot send a truck out of Racine and then put one driver on it and send it to Pittsburgh and be sure it is going to get there. It is impossible under the laws of the road in the first place.

Q. Yes; that is true.

A. And the dispatching of trucks, if you get a truck out beyond 150 or 200 miles and he runs into a little delay here and a little delay there, the first thing you know you don't know where your shipment is at. It may be in the ditch.

Q. Well, that is the point I wanted to get at.

A. From my knowledge of trucking operations, you cannot control truck operation to that extent in that mileage.

Q. You cannot?

A. No.

Q. Let me ask: Is there any advantage in the use of the truck in the collection of these forwarder shipments which will move by rail beyond the collection point? Let us take, for example,
157 Racine and Chicago. Chicago, I understand, is the collection point where these are consolidated?

A. Yes.

Q. Is there any advantage in the use of trucks over other means of transportation in getting that stuff into Chicago for assembly?

A. Yes; there is.

Q. Will you name what they are.

A. You are always sure of a truck going into Chicago. I know of cases there in Racine on trap-car movement where trap cars would go out of the plant, go over to the warehouse of the rail carriers, and there would not be sufficient tonnage to move that car out and they would hold that car there for twenty-four hours, or until sufficient tonnage was aggregated to ship it out in a rail car, and you don't find that in a truck movement.

Q. Well, then, you find there is expedition?

A. Very decidedly so.

Q. You get excellent truck service out of Racine into Chicago, do you?

A. Yes.

Q. And you can utilize that in connection with your shipments going all over the United States?

A. We do use it.

Q. Where they haul the stuff to the forwarder here?

A. That is right.

Q. The cost would be greater if you employed the truck
158 to bring it to the forwarder or the assembly point in Chicago, it would be at a greater cost to you than it is at the present time. Is that a fact, or do you know?

A. (No response.)

Q. Possibly I haven't made myself clear. Let me put it this way: Supposing, for example, that when you had an L. T. L. shipment, or several of them, you would call up the truck line and have them bring the stuff into Chicago and turn it over to the car forwarder here, as you speak of him. Would there be any increase in expense over what you pay at the present time under the present arrangements for the through movement by the car forwarder using the truck, then the rail?

A. Will you repeat that question?

Mr. TURNEY. I think I know what is bothering the witness. Do you mean if the combination truck rate to Chicago and the forwarder rate beyond is greater than the forwarder through rate?

Exam. LATER. That is right.

The WITNESS. Yes; the combination of locals from my knowledge of tariffs would be greater than the through rate and, as such, we would be penalized.

By Exam. LATER:

Q. You would be penalized by having that arrangement?

A. Yes.

Q. Are you familiar with the tariff that is proposed at
159 the present time, that is, to publish proportional rates by trucks that are to be used in connection with the forwarder out of the assembly point? Are you familiar with this particular tariff?

A. I am not, Mr. Examiner.

Q. All right. That is all I want to know.

Redirect examination by Mr. QUIRK:

Q. Mr. Brown, taking this illustration that the Examiner referred to, of moving traffic from Racine to Pittsburgh or points beyond Pittsburgh, is your hesitancy to make such a movement by truck based at all upon the lack of financial or uncertainty about financial responsibility of interchange truck service as it exists today?

A. In the first place, I would not know who the operator was on the extremity of the run, I would not know his reliability, I would not know anything about his schedule. I should know something about his rates but at this time I don't, and I think I would be playing with fire to even consider such a movement.

Q. Does any of your traffic move C. O. D.?

A. Oh, occasionally, but there isn't enough to even consider it. I might answer that a little further. The bulk of our merchandise is sold to stores like Woolworths, Kress, Kresge, Gimbal Brothers, and so forth. They are all pretty reliable people

so we are not so much interested in the C. O. D. part of
160 it.

Recross-examination by Mr. TURNEY:

Q. Mr. Brown, you have L. C. L. shipments from Racine to Chicago, do you not?

A. Yes.

Q. When you use trucks for those shipments, when you use the common carrier trucks, you pay the local class rates?

A. Oh, yes.

Q. Now, as a shipper out of Racine, do you feel you are being discriminated against when you pay that local class rate for that shipment to Chicago as against the shipper in Racine who gets the advantage of a proportional rate to a point beyond Chicago in connection with the forwarder rate?

A. Yes; the tonnage that trucks would handle to the forwarders, to the forwarder companies would be made possible with one or two stops. With a common carrier going to ten or fifteen different stores here you would have that many stops. It seems to me that your L. C. L. rate from Racine to Chicago should be higher than the proportional rate from Racine to Chicago in conjunction with carloading companies.

Q. You do not think, then, this proposed proportional rate in connection with the traffic going to Chicago unjustly discriminates against a local shipper from Racine to Chicago?

A. No; it does not, because if it did you would not even have through rates on straight rail traffic.

161 Mr. TURNEY. That is all.

Exam. LATER. Is there any further examination?

(No response.)

Exam. LATER. You are excused, Mr. Brown.

(Witness excused.)

A. F. BOWMAN was sworn and testified as follows:

Direct examination by Mr. QUIRK:

Q. What is your name?

A. A. F. Bowman.

Q. Where do you reside?

A. Racine, Wisconsin.

Q. What is your business?

A. Agricultural implements and tractors, a full line of agricultural implements.

Q. What company are you connected with?

A. J. I. Case Company.

Q. Does that company ship out and receive in Racine, less than carload and carload traffic?

A. Yes, sir.

Q. Do you ship a substantial amount of less than carload traffic?

A. Yes, sir.

Q. Do you receive a substantial amount of it?

A. Yes, sir.

Q. What means of transportation is available to your
162 company at Racine?

A. Both carloading, less than carload, carload—I am speaking of full carload shipment—less than carload——

Q. Well, I guess you misunderstood me. Racine is served by a railroad, is it not?

A. Oh, yes; yes.

Q. Are you located on the tracks of any railroad?

A. Yes, sir.

Q. What railroad?

A. The Milwaukee Railroad and the Northwestern Railroad.

Q. Both of them?

A. Yes, sir.

Q. Racine is also served by trucks?

A. Yes, sir.

Q. Do you use trucks?

A. Yes, sir.

Q. Now, do you use these forwarding companies in connection with your less than carload traffic?

A. We have done so for all of twenty years.

Q. You have?

A. Yes, sir.

Q. Do you use them to a greater or lesser extent in recent years?

A. Why, I think to a greater extent.

Q. On your outbound business?

163 A. Particularly on the outbound business.

Q. Particularly on the outbound business. To some extent on your inbound business?

A. Yes, sir.

Q. Will you describe in a sketchy way, where your territory is which is reached by these forwarding companies?

A. I think I can describe that best by saying practically all of the territory that is reached by the forwarder companies.

Q. Are you familiar with the rates that apply by forwarding companies between Racine and given points, and by rail?

A. Fairly.

Q. Well, do you know whether or not they are the same? Do you agree with Mr. Brown on that?

A. Well, in the main I would say they are practically the same. In some instances they are less and in some instances they are slightly heavier.

Q. Slightly more.

A. Just slightly.

Q. Yes. Now, do you use the forwarding companies on your less than carloading business to a greater extent than you do the rail line?

A. Yes, sir.

Q. Why?

A. Because of the use of the forwarding companies and expeditious services that they furnish as well as the fact
164 that the forwarding companies pick up the freight at your door and deliver it to the consignee's door.

Q. Well, now, to shorten this up, if I ask you substantially the same questions that I asked Mr. Brown, in respect to the service and the other matters dealt with, would your answers be the same, substantially?

A. Substantially the same, I would say.

Q. Well, now, have you any thoughts of your own here that you care to put into the record?

A. Well, I would like to say for the forwarding companies that they have furnished a very important and helpful service for a great many years. They were the originators of the pick-up-and-delivery system which has been a great help to shippers and receivers of freight. It is a system for which the shippers and receivers are very appreciative. There has been a considerable outgrowth of that in recent years, but I believe if it had not been for the services originated by the carloading companies, shippers and receivers of freight would have been subject to heavier transportation charges because they would have been obliged to pay for those pick-ups and deliveries.

Q. Well, now, at the present time is it a fair statement that your use of the forwarder system of transportation is influenced not by any difference in rates as between the forwarder and rail, but the difference between the services you get from the forwarder?

165 A. That is correct.

Mr. QUIRK. That is all.

Cross-examination by Mr. TURNEY:

Q. Mr. Bowman, I asked several questions of Mr. Brown about the nature of the services and also the last question about the discrimination. Without repeating those questions, if I were to ask you the same questions, would your answers be approximately the same as his?

A. Well, I might say approximately, but in reference to discrimination I would like to enlarge on that a little bit.

Q. Go right ahead.

A. The statement made by Mr. Brown insofar as it relates to me is concerned, I think my answer would be slightly at variance. I do not believe there is any discrimination. As I understood the question, you asked it with reference to shipments to Chicago, for instance.

Q. At the local rates.

A. There is no forwarder service between Racine and Chicago. The forwarder service extends to points beyond Chicago, as far as we are concerned, to all parts of the country, and there is no local service from Racine except frequently railroad less than carload service and some combinations on through trucking service which we would not consider at all. So I would answer that directly by saying there is no discrimination.

166 Q. Well, that was not my question, Mr. Bowman. The question was in this fashion: This rate that is here in issue is a proportional rate applying on through traffic which the forwarders will pay for the truck haul between Racine and Chicago, which is less in some instances than the local rate of the truckers between Racine and Chicago.

A. Yes, sir.

Q. Now, as a shipper you also ship to Chicago, I assume, or Racine, shipments from Chicago?

A. Yes, sir.

Q. Now, as a shipper at the local rates by truck between Racine and Chicago, do you feel you are in any way discriminated against by that kind of a proportional rate?

A. No; I made the explanation that I did, with the idea in view in answering your question.

Q. In other words, you think it is entirely a different kind of traffic and not a local traffic at all?

A. It is very much different.

Q. Would it also be true, Mr. Bowman, that the improvement in the forwarder service which has been occasioned in recent years has been due largely to the coordination of the truck service with the rail service, and the utilization of the service in the field, the utilization of the truck service in the field where the truck gives a better service?

167 A. I would like to answer your question by saying that I think the forwarders have always been progressive and, as such, that the use of the services they have at their disposal, the combination of such services have made them possible.

Q. But, if it had not been for the truck they could not have

given that improved service. That is what I am trying to bring out.

A. That is correct. And I think they are entitled to use them.

Mr. TURNEY. That is all.

By Exam. LATER:

Q. Would you use the forwarder in moving traffic say to Indianapolis from Racine, or do you use through motor carrier service?

A. We use the forwarder as well as the motor carrier service.

Q. That brings up one question. In this particular case, these proportional rates would apply on traffic going to any points in Indiana, would they not?

A. (No response.)

Mr. QUIRK. These proportional rates would apply to and from Chicago on any traffic that reaches Chicago, for example, going west in a carload or a truckload.

Exam. LATER. In a truckload. I see.

Mr. QUIRK. It does not matter so far as this proportional rate is concerned, whether it came from Indianapolis to New York or Buffalo or Washington.

Mr. TURNEY. We can answer the question from the
168 tariff in just a minute. I don't know whether their rates apply from Racine to Indianapolis or not.

Exam. LATER. Well, if you will answer the question later on, I wish you would, because I am interested in that.

Mr. QUIRK. Which question do you want? Does the proportional rate apply on traffic from Racine to Indianapolis?

Exam. LATER. I am talking about the proportional rate from Racine to Chicago applying on traffic to or from points in Indiana.

Mr. QUIRK. That is precisely what I understood you to want.

Exam. LATER. That is right.

Mr. QUIRK. And I have answered it.

By Exam. LATER:

Q. For what distances do you ship by truck?

A. By truck?

Q. Yes; using the truck exclusively.

A. On an average, say about 300 miles or 400 miles. In the case of Minneapolis, we ship by truck to Minneapolis.

Q. That is the longest distance you use the truck?

A. In a few instances it might be longer, but in the main, that is correct.

Q. But, on your hauls say to Lafayette, Indiana, what then?

A. The services of the truck lines, combination services of the truck lines on the through rates immediately becomes more

dependable in certain territories so in that instance that service is used as a truck haul.

169 Q. I see. I was merely interested in finding out to what extent you use the trucks for distances longer than from Racine to Chicago?

A. Well, the services are so independable that it is really a hazard, and shippers do not attempt to use those services.

Q. And that is one of the reasons why you prefer forwarder service, because of the dependability?

A. Yes; and the responsibility.

Exam. LATER. That is all.

(Witness excused.)

Mr. QUIRK. Mr. Examiner, the rate from Racine to Indianapolis is not in effect by default. It formerly was, but has been cancelled. It could be used by any other shipper.

Exam. LATER. Well, that is what I meant.

H. J. BOWMAN was sworn and testified as follows:

Direct examination by Mr. QUIRK:

Q. What is your name?

A. H. J. Bowman.

Q. Where do you reside?

A. Racine, Wisconsin.

Q. What is your business?

A. I am with S. E. Johnson & Son, Incorporated.

Q. What is the nature of the business of that company?

A. They are manufacturers of floor wax, paints, varnishes, and allied products.

170 Q. Is your company located on the rails of any railroad?

A. Yes, sir.

Q. What railroad?

A. The Chicago, Milwaukee, St. Paul, and Pacific Railroad Company.

Q. Does your Company use the services of that railroad?

A. Quite a lot.

Q. Do you make carload and less-than-carload shipments, or both?

A. We make both.

Q. Inbound and outbound?

A. Yes, sir.

Q. Is your less-than-carload business a substantial part of your business?

A. Approximately one-third, I would say, of our total business.

Q. In a general way, could you describe the territory between which you do your less-than-carload business?

A. Yes. Our less-than-carload business from our local plant is principally in the Central Freight Association territory. We go a little bit beyond that, maybe, in the east, south to Tennessee, west—well, we get into Nebraska in the west. That is roughly speaking. Southwest to Oktlahoma and in the northwest we will get up into Montana with our L. C. L.

Q. I take it that your L. C. L. shipments are the outbound shipments?

A. I would like——

171 Q. Can you answer that?

A. I would like to add to my previous answer, first, if I may, this: The reason I stated those limitations of L. C. L. is because those are our ordinary L. C. L. points, but we have branches throughout the United States that it is necessary to make L. C. L. shipments to, that includes the entire country, of course.

Q. Now, your L. C. L. business, I take it, from what you say, is your out-bound business, principally?

A. Principally; yes.

Q. Now, what type of transportation agency do you generally use on your out-bound L. C. L. carload business from Racine?

A. Well, we use what in our opinion is going to give us the best service.

Q. Well, what has been your past experience? Have you used rail or forwarder type of service?

A. To certain points it is necessary that we use rail and where the forwarder companies operate and the rates are equal, or lower than the rail, we use it. Of course, we use a lot of truck service to points I would say within 300 miles of Racine.

Q. Now, do you find the forwarding service satisfactory service?

A. Very satisfactory.

Q. In general, is it more or less satisfactory than the

172 all-rail service?

A. We can depend upon service more with the forwarding companies than by rail. For instance, if we make a shipment to New York, we figure it will be there probably the fourth morning out of Racine. We can almost depend on it.

Q. By forwarder?

A. By forwarder. To the Pacific Coast, in about eight days.

Q. What is your experience when you use all rail?

A. Quite frequently we lose twenty-four hours in transferring in Chicago. In-bound, specially on the in-bound material, it is very seldom that the shipment leaves Chicago on the same night that it gets into Chicago.

Q. Well, now, you have heard the testimony of Mr. Brown and Mr. A. F. Bowman?

A. Yes, sir.

Q. Do you subscribe generally to what they have said?

A. Generally; yes.

Q. You found this service very important to your industry?

A. It is very important.

Mr. QUIRK. I think that is all the questions I have to ask.

Mr. TURNEY. I have no questions.

Exam. LATER. That is all.

(Witness excused.)

173 Mr. QUIRK: I believe we can shorten this up, Mr. Examiner, if we will let Mr. Hall, Mr. Paulsen, and Mr. Hart to come up here and be sworn and testify together.

Exam. LATER: All right, I will swear them together.

R. B. HALL, E. PAULSEN, W. B. HART were sworn and testified as follows:

Direct examination by Mr. QUIRK:

Q. I will ask you, Mr. Hall, first, to state where you reside.

A. Racine, Wisconsin.

Q. What is your business?

A. Farming implements.

Q. What is the name of the company you are with?

A. Massey Harris Company.

Q. You ship less than carload freight and carload freight?

A. Yes, sir.

Q. Inbound and outbound?

A. Yes, sir.

Q. Do you use the forwarder as well as the rail service?

A. Yes, sir.

Q. Which do you prefer, generally?

A. Where we can, we use the forwarder service.

Q. Mr. Paulsen, where do you reside?

A. Racine, Wisconsin.

174 Q. What company are you connected with?

A. Walker Manufacturing Company and subsidiaries.

Q. The Walker Manufacturing Company have a plant at Racine, Wisconsin, do they?

A. Yes, sir.

Q. What is the nature of its business?

A. Automobile equipment.

Q. Does that equipment move in carload and less-than-carload lots?

A. Yes, sir.

Q. Do you use the forwarder type of service to reach your customers?

A. Yes, sir.

Q. Do you use rail to some extent?

A. Yes, sir.

Q. Do you use forwarder to a greater extent on some of your traffic?

A. It depends on what points can give the best service.

Q. Mr. Hart, what is your name?

A. W. B. Hart.

Q. Where do you reside?

A. Racine, Wisconsin.

Q. What company are you with?

A. Hamilton Beach Company.

Q. Does it have a plant at Racine?

A. Yes, sir.

175 Q. What is the business of that company? What business is it engaged in?

A. Vacuum cleaners, drink mixers, and general soda fountain appliances.

Q. Do you ship and receive both carload and less than carload traffic?

A. Yes, sir.

Q. Is less than carload traffic an important part of your traffic?

A. Yes, sir; it is.

Q. Do you use the forwarder type of service as well as the rails?

A. Yes, sir.

Q. Well, now, gentlemen, have you heard the testimony of Mr. Brown, Mr. A. F. Bowman, and Mr. H. J. Bowman?

(Witnesses answer in the affirmative.)

Q. If I should ask you the questions that were asked those gentlemen, would your answers be substantially the same as the answers given by each of them?

(Witnesses answer in the affirmative.)

Q. Well, without repeating the questions, we will assume that I have asked you those questions. Are your answers the same?

(Witnesses answer in the affirmative.)

Mr. QUIRK. That is all.

176 MR. TURNEY. I have no questions.

Exam. LATER. All right, gentlemen, you are excused.

(Witnesses excused.)

P. E. JOHNSON was sworn and testified as follows:

DIRECT EXAMINATION

The WITNESS. My name is P. E. Johnson. I live at 1129 West Lawn Avenue, Racine, Wisconsin. I am Secretary of the Association of Commerce, appearing for the Association of Commerce and for the Service Transport Company.

Qualifications: Nineteen years as traffic secretary of the Racine Association of Commerce. Prior to that time I was in industrial traffic work.

We are very much interested in this situation pertaining to this proportional rate because it involves the shipping facilities in and out of Racine.

Our first exhibit we will put in today is Exhibit 11, a short page, giving a history of the rates in and out of Racine in connection with the carloading or forwarding companies. This exhibit goes back as far as 1930. At that time the rate between Racine and Chicago was 30 cents per hundred pounds.

Effective on April 1st—these figures are taken from the records of the Service Transport Company—they filed with the Commission minimum-rate schedules MF–ICC No. 1, which showed
the going rate of 30 cents. Before that rate became
177 effective the tariff was cancelled by No. 2 and a minimum rate put in of 20 cents effective on the same day, April 1, 1936. While it showed the minimum rate of 20 cents, the going rate and the rate that was applied was 30 cents.

Effective on February 1, 1937, on advice of the Commission we filed copies of memorandums of oral contracts. We show those listed as MF–ICC Nos. 3 to 17, inclusive. The rates on those schedules as shown here were 30 cents in Column 57 and 20 cents on articles taking lower than class 57 or column 57.

On May 26, 1937, there was a reissue of some of the MF–ICC memorandum of oral contracts. There was a slight change in the minimum. The rates shown here remained the same.

All of those memorandums of oral contracts were cancelled on July 26, 1937, and certain of those memorandums of contracts issued effective May 26, 1937, were rejected by the Commission due to the fact that the Service Transport company were participating by concurrences in some of the tariffs of the forwarding companies which are on file with the Commission.

Since that time, of course, the Service Transport Company has concurred in practically all of the carload companies that have tariffs on file with the Commission.

That brings the status of the rates down to the present date.

Exhibit 12 shows the number of shipments, weight in pounds,

charges, and average revenue in cents in shipments origi-
178 nating at or destined to Racine, Wisconsin, and is in connection with the Service Transport Company for a period of three weeks during 1937.

We took the week of January 4th, July 19th, and November 15th. There was no more reason for taking those three weeks than any other three weeks.

I will refer to page 1. You will note that the top half of the page reads: "Excluding minimum shipments." This page is a recapitulation of page 2, which covers the shipments and weights on Chicago local traffic; page 3, which shows the shipments and the weights, charges, and so forth, on truck interline traffic moving beyond Chicago.

Page 4 is the same information in connection with the forwarding companies and wherever the words "carloading company" is used here, they mean forwarding company.

By Exam. LATER:

Q. The first three pages, then, relate to truck rates, is that right?

A. They are all truck rates. They are truck rates of the Service Transport Company.

Q. All right. Go ahead.

A. That is in connection with the carloading movements, in connection with truck interline, and in connection with the Chicago local traffic.

By Mr. QUIRK:

Q. When you say carloading, you mean forwarding?

A. That is right.

179 Now, the reason why on page 1 we have taken and split that, including minimum shipments and excluding minimum shipments, splitting it between those two headings, is due to the fact that in your interlining truck rates, your minimum rates is on a hundred pounds first class. Between Chicago and Racine our minimum is 75 cents.

Now, if you look at the bottom part of page 1, on Chicago local traffic, including minimum, there were 1,163 shipments moving between Racine and Chicago. That is local traffic. That is 29.8 percent of the number of shipments.

On the truck interline we had 548 shipments, which is 14.1 percent of the number of shipments, and on the forwarding company traffic there were 2,187 shipments——

By Exam. LATER:

Q. That is on page 1?

A. That is on page 1.

Q. Oh, yes.

A. There were 2,187 shipments, or 56.1 percent of the number of shipments.

When you get into the tonnage figures, the Chicago local tonnage for the three weeks' period was 1,310,266 pounds, which is 51.2 percent of the traffic.

The truck interline was 416,543 pounds, which is 16.3 percent, and the carloading tonnage, forwarding company, was 829,686 pounds, or 32½ percent.

We also show the revenue there in the Chicago local
180 traffic of $3,201.53. On the truck interline traffic, $958.
On the forwarding, or carloading traffic, $2,574.02. Which gives us an average revenue per hundred pounds on the Chicago local traffic, including minimum shipments, of 24.43 cents. On truck interline it gives us 23 cents. On the carloading or forwarding truck, the revenue is 31.02 cents.

Now, we have also some figures without the minimum on the upper half of the page. In other words, 42.4 percent of the number of shipments were minimum shipments. When we get into the tonnage only 5.67 percent was minimum shipments.

Excluding the minimum shipments, going to the top half of the page, the Chicago local traffic, we find 590 shipments, or 26.3 percent of the shipments.

On the truck interline we had 366 shipments, or 16.3 percent of the shipments.

On the carloading or forwarding, there were 1,288 shipments, or 57.4 percent of the number of shipments.

Taking the tonnage on the Chicago local, 1,241,363 pounds, which is 51.5 percent of the total, that is the figure we get.

Q. What is that figure?

A. 51.5 percent. On the truck interline the tonnage was 401,249 pounds, or 16.6 percent, and on the carloading or forwarding the tonnage was 768,787 pounds, or 31.9 percent.

The revenue on the Chicago local was $2,776.23. On the
181 truck interline it was $894.97. On the forwarding company it was $2,251. And our average per hundred pounds return in cents on the Chicago local was 22.36 cents. On the truck interline, it was 22.3 cents. On the forwarding company it was 29.28 cents.

The reason that was split there was because we thought it would give a more clear picture. By leaving in this minimum it would rather distort the picture.

Now, the next exhibit, which will be Exhibit 13, pertains to a comparison of carloading and truck-line rates with a comparison of the interline truck divisions with a proportional rate applicable to and from Racine, which is now under suspension and

which is the same rate which has been in effect for a good many years.

Now, in preparing this exhibit we have taken Central Motor Freight Association territory and to some extent Trunk Line and New England.

Now, as far as Trunk Lin and New England is concerned, there has been only one shipment moving in that I know of via truck from that territory. After all, I think about 95 percent, possibly even a little better than that, is all C. F. A. business as far as trucks are concerned. On top of that it seems that 300 to 400 miles is about the limit for truck operations, as far as our shippers are concerned, and if you go beyond the two-line haul, why, it is absolutely out.

182 Now, we have picked these points as representative points and on page 1 the first figure we show is the City of Quincy, Quincy, Illinois. We show the carload or forwarding rate on first class of 89 cents; second class, 76 cents; and proportional rate, that is under suspension, 30 cents.

Following that we show the truck rates between Racine and Quincy, and below that we show the division of 32.04 cents on first class via truck against 30 cents, and on second class, 27.36 cents via truck against 30 over the forwarding companies.

Now, those divisions are based on a first-class prorate and I would like to have it clearly understood that is absolutely tops on divisions that is possible to get and in many cases you don't come out quite so good.

Now, we take a look at Peoria and we find a truck-division revenue of 30.66 cents against 30 cents proportional rate.

Next, Evansville, Indiana, our truck division gives us 31.96 cents on first class against the forwarding rate of 30 cents.

When we look at class 2, the truck interline gives us 27.2 cents against 30 cents of the forwarding company.

I do not believe it is necessary to go all through that exhibit because the situation remains about the same and I think if it was averaged out we would find that the truck division

183 while it varies in some cases higher and in some cases lower, why it would run approximately about 30 cents.

Now, we have thrown in a few points in New England territory.

By Mr. QUIRK:

Q. How do you identify this exhibit?

A. Exhabit 13.

Now, we will take up the next exhibit.

Q. And that is Exhibit 14?

A. Yes, that is Exhibit 14.

On page 1 we have shown class rates applicable via Truck Line between Chicago, Illinois, and the shore line cities of Kenosha, Racine, Milwaukee, Sheboygan, and Green Bay. Those figures are placed in there for the purpose of reference. The balance of the page covers less truckload rates applicable between Chicago and the same points.

As an example there, we might look at Item 940-B, which is the first one under Boots and Shoes. The less truckload rate to Chicago on Boots and Shoes is 38.5 cents per hundred pounds. Incidentally, boots and shoes classify first class and under the first-class rates from Sheboygan to Chicago, the normal class basis would be 68 cents.

Page 2 is a continuation of the less truckload rates. We might take a look at Item 2900 there. Under "S" which stands for Sheboygan, the commodity rate on knit goods to Chicago is 61 cents. The normal class is first class of 68 cents.

The last item, meats, you apply from Green Bay to
184 Chicago the commodity rate of $59 cents. The normal class basis for meats is first class, which would be 67 cents.

Now, taking pages 3, 4, 5, 6, 7, 8, and 9, we have shown there the commodity rates that apply between Chicago, Illinois, and Kenosha, Racine, Milwaukee, Sheboygan, and Green Bay. These rates are based on a 5,000 pound minimum, which, of course, is less truckload, and is also based on a 10,000 pound minimum. And it indicates that those rates, particularly on the 5,000 and 10,000 pound basis, are considerably below the class basis that would apply as the normal class basis.

I have not checked all of them against the classes. I have a few of them here. You have raincoats, for instance, on page 5, Item 1860, the third item from the top. From Kenosha to Chicago they have a rate of 27 cents on 5,000 pounds. The normal class rate would be 43 cents. From Milwaukee to Chicago the commodity rate on $5,000 pounds is 32 cents. First class from Milwaukee to Chicago, allowing for the reduction on a 5,000 pound class rate, the rate would be 50 cents. On a 10,000-pound shipment from Milwaukee to Chicago, 24 cents against a normal class basis of 35 cents.

This exhibit includes all of the commodity rates applicable between Chicago and the points shown therein and if there are any that are not in there, I have just missed them, that's all. It is supposed to include all of them.

The next exhibit, Exhibit 15, is a single sheet. That
185 is really a companion exhibit to exhibit No. 14. No. 14 lists out all of the commodity rates and on exhibit 15 we have taken the commodity rates and shown them by the level of

the rate. As you will note, the exhibit is in three brackets headed Kenosha, Racine, Milwaukee, Sheboygan, and Green Bay.

The first bracket is less than carload, the second bracket is 5,000 pounds minimum, which is also less truckload, and the third bracket is 10,000-pound minimum. Bearing in mind that the proportional rates in 61–A, under suspension, as far as Kenosha is concerned, that rate is 25 cents; Racine, it is 30 cents; Milwaukee, it is 30; Sheboygan, 35; Green Bay, it is 40.

Under the less-truckload, we have two rates, 24 cents one rate and another rate 34.25 cents. One is over and one is under the proportional rate of 25 cents.

At Racine you have two L. T. L. rates. One is 26 cents and one is 34¼ cents. One is over and one is under the proportional.

At Milwaukee we have three L. T. L. rates. At Sheboygan there are 12 L. T. L. rates ranging in rates from 19 cents to 64 cents.

At Milwaukee there are 10 L. T. L. rates ranging from 22 cents to 79 cents, 8 being over the 42 cents and 2 being under.

Now, under the 5,000-pound minimum, which is traffic moving in tonnage between Racine and Chicago, we find between
186 Kenosha and Chicago we have 40 less-truckload rates.

Bearing in mind that Kenosha's proportional rate is 25 cents, we have seven rates that are over that 25-cent level and we have 33 that are under.

At Racine, bearing in mind our proportional is 30 cents, we have 42 rates under the 5,000 pounds bracket, with four of them being over the proportional and 38 of them being under. At Milwaukee we have 52 rates, 14 of them being over the proportional of 30 cents and 38 of them being under that proportional.

Sheboygan has three rates, all under the 35 cents limit, or proportional rate, and Green Bay has four rates, one being the same as the proportional of 40 cents and three over.

The last bracket shows the 10,000-pound minimum and at Kenosha there are 41 rates, four of them being over the proportional rate and 37 of them being under.

Under Racine we have 42 rates, one being over and 41 being under.

At Milwaukee we have 46 rates, three being over and 43 under.

At Sheboygan we have five rates, one being over and four under.

At Green Bay we have six rates, all of them being under the proportional of 40 cents.

Our next exhibit, No. 16, is an exhibit giving a list of
187 commodity rates applying between Chicago and shore line cities, although it does not take in every commodity. The items that are shown here are not hand-picked items.

On page 1, which is the L. T. L. rates, you will notice that at the top the item 940–B, which is the shoes that we spoke about a few minutes ago, from Sheboygan to Chicago, that the normal class rate indicated by "1" in the brackets is 68 cents. The present commodity rate indicated by "2" in the brackets is 38½ cents, and that "3" in the brackets is the percentage that the commodity rate is of the class rate or the exception rate. In this case the commodity rate is 57 percent of the normal class rate.

I would ask you to refer to page two that covers the rates applicable between Chicago and Kenosha, Racine and Milwaukee. The first item there is Item 230, applying on advertising matter, books, and printed matter, and so forth, which normally takes the second-class rate. Under the present classification or exception rate, the rate from Kenosha on 5,000 pounds would be 36 cents. The present commodity rate is 21 cents. Under bracket 3 it shows that the 21 cents is 58 percent of the normal class basis of second class. At Racine the normal class basis on 5,000 pounds would be 39 cents. The commodity rate on 5,000 pounds is 23 cents and the percentage relation of 23 cents, the commodity rate, to the normal class rate of 39 cents 188 is 73 percent. That is the basis the entire exhibit is figured on.

Now, I have just a few figures in connection with that exhibit, which I figured out last night and did not have time to mimeograph. I have taken the same items that are in here with our classified classes 1, 2, and 3, which is the normal carloading or forwarding traffic. I have taken the normal class rate and figured that against the 30-cent rate out of Racine, 30 cents out of Milwaukee, and 25 cents out of Kenosha, proportional, to get the percentage relation with the forwarding rate or proposed rate as against the normal class basis, and compared that with the percentages as shown in the exhibit. In doing that, I have used the following items, which are 1, 2, and 3 items in the exhibit, which would be Item 230, 235, 400, 810, 910, 1270, 1530, 1550, 1590, 1860, 2520, 2880, 2970, 3840, 4000–A, 4160, 4190, 4490, 4590, and 4630.

By Exam. LATER:

Q. Mr. Johnson, I was just going to ask: Would it be possible for you to submit that in mimeograph form?

A. I would be glad to do it.

Q. Within ten days?

A. Yes.

Q. I will have to set it up in an exhibit form.

A. I would be very glad to. I would like just to refer to the percentages here.

Q. Oh, yes; but you will furnish that tabulation to the
189 Commission within ten days and send a copy to each of the parties of record?

A. Yes.

Now, in making this comparison we find that the present rates, that is, the commodity rates applicable between Kenosha and Chicago, that on 16 rates the aggregate percentage was 1,017 percent, which gives us a ratio of 63.6 percent. In other words, the commodity rate is 63.6 percent of the normal class basis. In using the proportional basis in there we find that figure is 1,056 percent, or an average of 66 percent as against 63.6 percent on the commodity rates.

On the 10,000 pounds we find the present rates are 54.7 percent, and the proposed proportional basis would make it 66 percent.

At Racine, in the 5,000-pound bracket, the present commodity rates are 65.8 percent of the normal rates, and the proportional rate is 73.7 percent.

On the 10,000-pound bracket the present commodity rates are 54.2 percent of the normal basis. The proportional rate figures 73.6 percent.

Out of Milwaukee, on the 5,000-pound bracket, the present commodity rate figures 64.6 percent of the normal basis and the proportional rate figures 66.8 percent.

On the 10,000-pound bracket, the present commodity
190 rates are 51.2 percent of the normal class basis, and the proportional rate figures 69.1 percent.

That is all I have, Mr. Examiner.

Exam. LATER: Are there any questions?

Cross-examination by Mr. TURNEY:

Q. Mr. Johnson, you have heard the testimony of the other shippers from Racine, I assume?

A. Yes, sir.

Q. As Secretary of the Chamber of Commerce of Racine, I assume that you are familiar with the needs and the commercial interests of that city and you know whether or not the expressions of these witnesses here correctly state or represent not only the views of shippers there generally, but also what, in fact, is to the interest of Racine and its shippers.

A. The statements those gentlemen made were absolutely correct. I am basing that, of course, on my knowledge of the conditions up there, the transportation systems that are used, and that knowledge goes back to March 15, 1919.

Q. If it should come about that it would be necessary for the forwarder to retire or greatly restrict its business activities at Racine, or to increase the rates substantially above the present

rates; what, in your judgment would be the effect upon Racine and its shippers and its commercial interests?

A. Well, I think it would be very detrimental to Racine because Racine is purely an industrial city and almost all of
191 the products that are manufactured at Racine are manufactured at Milwaukee, Chicago, or some other large community, and if we got to the point where this service was knocked out or crippled it would be a very serious thing for us, it would have a very serious effect on our industries. After all, there is such a thing as competition. Many of these shipments, they want them in a hurry. If this forwarding service should be taken away, it would naturally put us at a disadvantage with Chicago, Milwaukee, and other communities.

Q. Do you agree with Mr. Brown's view that it is out of the question for the railroads to provide an equivalent of this service?

A. Well, I would not say it is entirely out of the question, but they have never done it before and I do not think they will.

Q. Well, from a practical standpoint it is?

A. Yes.

Q. It requires a national organization?

A. Yes.

Q. And it also requires a coordination of both truck and rail?

A. Yes.

Q. Representing the shippers of Racine, I assume there are a large number of shippers there, shippers who ship between Racine and Chicago at the local rates?

192 A. Yes; most of them do.

Q. Speaking from the standpoint of those shippers, is it your judgment they will be subjected to any disadvantage or discrimination by the publication of proportional rates such as those contained in these tariffs?

A. None whatever.

Q. Why?

A. There is certainly no discrimination that I can see against any of our shippers. I do not think any of our shippers would feel that way. There would be no objection at all to having a proportional of 30 cents into Chicago in connection with the forwarding companies.

Q. Now, you have been engaged in this kind of work for some time. You are also familiar with not only forwarding rates but also truck rates?

A. Yes.

Q. Are you familiar also with the service that is proposed to be rendered under this tariff?

A. Yes.

Q. Is it your judgment that the charges that are quoted in these suspended tariffs are reasonably adequate charges for the service?

A. I think they are. They have been in effect a great many years.

Q. Do you think they are fairly compensatory to the
193 truck carriers?

A. Yes.

Q. I believe you represent one of the truck lines?

A. I do.

Q. Now, what effect do you think it would have upon the truck service of Racine and upon that line should, as a result of this proceeding, the forwarder be compelled to cease serving Racine and cease giving this traffic to the trucks?

A. Well, after giving you the percentage I gave you on the tonnage in one of these exhibits, a few moments ago, there is only one answer to that question. It means that the freight would have to be diverted to some other channnel even though the other channel might not be satisfactory.

Q. What effect would it have upon your truck service?

A. Well, that would be curtailed also.

Q. Would that adversely affect your people?

A. Unquestionably. Certainly it would.

Mr. TURNEY. That is all.

Exam. LATER. Is there anything further?

(No response.)

By Exam. LATER:

Q. I believe you stated that you are familiar with the tariff publications as a general matter?

A. Yes.

Q. What is your opinion with respect to the use of proportional tariffs for this type of business rather than the joint
194 publication?

A. Well, there is a situation there, Mr. Examiner, that is rather difficult to answer. If we knew the answer of the Commission——

Q. I want you to forget the Commission's point of view. I want you to state your opinion, I want to get your point of view as a man knowing the difficulty of reading and handling tairffs, and all those matters. I want your independent judgment.

A. Well, as far as that is concerned, there is no difference. The result is the same whether the rate is published in a carloading tariff or by concurrence. In other words, this 30 cents will be a division between carloading, forwarder, and truck lines by virtue of the truck lines concurred in that tariff. I think it is better to have it out in the open as a proportional rate.

Q. Well, is there any advantage to the trucker, say, in operating between Chicago and Racine, to have that particular type of rate?

A. As a proportional rate?

Q. Yes.

A. I would say so; yes. For the reason that if it is on file with the Commission, then there is no question about it. Everybody knows it.

Q. Would it cause you or your shippers any added
195 difficulties, if proportional rates were published to Chicago and to be on Chicago?

A. That all depends on what the proportional rates would be on the other side of Chicago.

Q. Well, now, say it would be a proportional split of the joint rate at the present time.

A. In other words, we will take the Racine-Pittsburgh rate and split it into two proportional 30-cent rates. The result is the same as far as I can see.

Q. Is this proportional rate in connection with the forwarders, any advantage to the truckers that belong to your Association?

A. Well, I don't quite understand what you mean by that.

Q. You do have truckers that are members of your Association, do you not?

A. Yes.

Q. Is it any advantage to them to have a proportional that sets the amount of revenue they are going to receive rather than leaving it to divisional agreements that may be changed from time to time?

A. I think it would be more satisfactory by having the 30-cent rate in that proportional tariff, because, after all, when you put it in by concurrent, there is always a question of what that rate is. It is agreed today it is 30 cents but it is not like having it filed as a proportional rate.

196 Exam. LATER. Are there any other questions?

(No response.)

Exam. LATER. The witness is excused. Thank you, Mr. Witness.

(Witness excused.)

Exam. LATER. Is that all from the shippers?

Mr. QUIRK. That is all, with the exception that I would like the record to show that Exhibits 11 to 16, inclusive, are received in evidence.

Exam. LATER. Yes; the record may so show.

(Exhibits 11 to 16, both inclusive, Witness Johnson, received in evidence.)

JAMES DOWELL was sworn and testified as follows:

Direct examination by Mr. BORN:

Q. You may state your name and place of residence.

A. James Dowell, Columbus, Indiana.

Q. With what company are you associated and in what capacity?

A. Reeves Pulley Company, purchasing agent.

Q. How long have you been connected with the Reeves Pulley Company?

A. About thirty years.

Q. Where is their plant located?

A. Columbus, Indiana.

197 Q. And that is south of Indianapolis, about forty miles?

A. Forty miles south.

Q. What commodity do they manufacture?

A. Power-transmission machinery.

Q. Are these power transmissions shipped to all sections of the United States?

A. That is true.

Q. How are they shipped generally, Mr. Dowell?

A. I would say 90 percent L. C. L.

Q. What means of transportation do you use? Have you ever used a forwarder company?

A. We have used them for possibly twelve years. Ever since the first office was established in Indianapolis.

Q. What percentage of your L. C. L. shipments outbound move in connection with the forwarding companies?

A. I would say 75 percent.

Q. Why do you use these forwarding companies, Mr. Dowell?

A. We use them because of the better service, the more dependable service, the fact that in tracing shipments we can get absolute information. Our business is such that it is necessary for us to ship quickly and deliver quickly, and in many instances guarantee deliveries. We never found any service that was equal to the forwarding companies' service.

Q. Is the service an important item to your company?

A. We feel that that has been very important to the
198 building of our company, the building up of our company.

Q. Now, can you state how the service, as given to you by the forwarding companies, compares with that rendered by other transportation agencies such as rail or truck?

A. Well, taking all rail, as a rule it would mean twenty-four hours in loss of time over the forwarding agencies. The truck of the forwarding agents leaves Columbus in the afternoon and

practically all those shipments move out of Indianapolis at night.

Q. You mean that shipments handled from your plant this afternoon would leave Indianapolis by a forwarding company tonight?

A. That is right.

Q. Is that the regular service that has been rendered to you?

A. That is what we get day in and day out.

Q. Now, how do the rates as charged by the forwarding companies compare with those charged by other transportation agencies?

A. They are practically the same with the exception of that territory west, with the exception of the west coast.

Q. Are they higher or lower than the express rates?

A. They are lower.

Q. And they are practically the same as the rate that is charged by the rail carriers?

199 A. That is true.

Q. How many years did you say you had been using the forwarder service?

A. I think it is about twelve years.

Q. Has it always been dependable to you?

A. From the very beginning.

Q. Have you had the opportunity of checking the records of your company to determine the amount of tonnage turned over to the forwarding companies during the first six months of 1937?

A. Our outbound business during that period delivered to the forwarders was about a million and a quarter pounds.

Q. Is this freight picked up at your plant at one time by a single truck?

A. Well, it is usually picked up between one and two o'clock in the afternoon.

Q. And goes into Indianapolis?

A. Yes; it gets there in time to move out that night.

Q. If the service as rendered by the forwarders were to cease at Columbus, Indiana, would this have an effect upon your business?

A. Yes; it would eliminate this service we are getting at the present time which we think is very important. We would probably have some effect on the operation of the dependable truck lines we have in Columbus, which handles this for-

200 warding business.

Q. What have you to say about competition? Would it enter into your competition with other manufacturers?

A. Yes; we have competition both on the west coast and on the east coast. Anything that cuts down the time that it takes us to deliver into either of those territories is bound to have its effect on our business.

Q. Do you think it would result in any loss of business?

A. Yes.

Q. Because of your inability to give service to your customers?

A. Yes.

Q. In other words, the time of making delivery becomes most important in your business, does it not?

A. That is very true.

Q. And you now depend on the forwarding companies for that service?

A. Yes.

Q. Have you been able to find a substitute for that service?

A. There would be only one substitute that I know of and that would be express.

Q. And that would increase your cost, would it not?

A. That is true, and probably it would be prohibitive in a good many cases.

201 Q. You made a statement that most of your shipments were L. C. L. or L. T. L. Is that because of the fact that small inventories are being carried by your dealers or your distributors?

A. No, not exactly. Our product is a specialty. It is a specialty which moves in L. C. L. lots. In other words, it is not an item that is in stock nor is it in large quantities for use.

Q. Now, if this service you have told us about, as now being rendered to you by the forwarders, were to cease at Columbus, Indiana, what would happen to the tonnage that is now being handled by the forwarder?

A. Well, I would say that most of it would go to the rail lines.

Q. Do you find that rail service satisfactory?

A. That is the reason we are using the forwarders.

Q. What experience, if any, have you had with any truck companies handling long haul business where more than two carriers are involved?

A. That experience has not been satisfactory. It is impossible to get any line on where the shipment may be if it is necessary to trace it. There is no dependability on their schedules, and we just don't use them.

Q. Do you believe that the truck lines are suitable for the handling of long haul traffic?

202 A. Well, I would say they have not got the setup to do it today.

Q. Now, what have you to say relative to your ability to trace shipments made in connection with the forwarding companies?

A. It is always possible to get information as to the whereabouts of a shipment almost immediately. By that I mean during the day sometime. And that information is almost always correct. It is information we can pass on right away to our customer if he is asking when he can get delivery or where his shipment might be. And that is quite important in our business.

Q. I understand that Columbus is an off-line point?

A. Yes.

Q. You are located on the Pennsylvania Railroad?

A. Yes; between Indianapolis and Lafayette, and we are located on the Big Four.

Q. How are L. C. L. shipments handled by the railroad companies from Columbus, Indiana, for points beyond Indianapolis?

A. Well, that will depend largely on the tonnage they might have that day. I expect most of it will be shipped into Indianapolis.

Q. Do you know whether or not the shipments are way billed out of Indianapolis or out of Columbus, Indiana?

A. Well, unless there has been a change made recently,
203 they are way billed out of Indianapolis.

Q. And sometimes it is several days before you can get a record of whether or not the shipment would move out of Indianapolis?

A. If it is necessary to get information from a way bill record it takes a long time.

Q. This service rendered by the forwarding companies, is it actually needed by your company?

A. Yes.

Q. If the rates set forth in the suspended tariffs will hold the forwarder service in the field, do you want to see them become effective?

A. I certainly do.

Mr. BORN: That is all.

(Witness excused.)

GEORGE W. LOGAN, was sworn and testified as follows:

Direct examination by Mr. BROWN:

Q. You may state your name and residence.

A. George W. Logan.

Q. Where do you reside?

A. Kokomo, Indiana.

Q. You are associated with what company?

A. Kingston Products Corporation.

Q. In what capacity, Mr. Logan?

204 A. Traffic manager.

Q. How long have you been traffic manager of the Kingston Products Corporation?

A. Twenty-two years.

Q. Where is their principal plant located?

A. At Kokomo, Indiana.

Q. What do they manufacture, Mr. Logan?

A. They manufacture roller skates, toys, radios, ignition specialties, carburetors, miscellaneous machinery parts, washing machine parts, and so forth.

Q. Do they ship all these products they manufacture to all sections of the United States?

A. They do.

Q. What is the principal means of transportation that your company employes in moving these products to the various sections of the United States?

A. We move the majority of our products by the carloading companies.

Q. Why do you use the carloading companies or the forwarder service?

A. Due to the expedition in the service to the different points of our consignees.

Q. Is service an important element to be considered in distributing your products?

205 A. It is. We have so many seasonal products that if they are delayed, we lose orders by not getting them there on time.

Q. How long have you been using the forwarder service?

A. I would say for the last ten or twelve years.

Q. Has it at all times been satisfactory?

A. It has.

Q. Have you made an estimate of the total number of pounds that were handled by your company outbound in connection with forwarder companies for the year 1937?

A. I have.

Q. What was that figure?

A. The approximate outbound was 1,200,000 pounds.

Q. Have you made the same study as to the inbound tonnage that was received by your plant?

A. I have.

Q. What was that figure?

A. Approximately 600,000 pounds.

Q. So that will give you an average of about 4,000 pounds per day outbound and 2,000 pounds per day inbound, is that correct?

A. That is right.

By Exam. LATER:

Q. How much inbound?

A. 1,200,000.

By Mr. BORN:

Q. That is outbound?

A. Outbound, no; that is inbound The outbound is 600,000 pounds.

206 Q. Can you name some of the points to which you have used forwarder service?

A. Yes.

Q. You may refer to your memorandum, if you wish.

A. Well, we use Alexandria, Virginia; Buffalo, New York; Atlanta, Georgia; Denver, Colorado; Edgewater, New Jersey; Fargo, North Dakota; Houston, Texas; Los Angeles, San Francisco, California; Portland, Oregon; Seattle, Washington; Minneapolis, Omaha, Pittsburgh, and we practically ship all-over the United States and we even use the forwarding companies for our export shipments.

Q. How do the rates charged by the forwarding companies compare with those charged by the rail carriers?

A. There is no difference in the rates except to the western coast.

Q. And that is a trifle less by the forwarder?

A. It is less than all-rail rates.

Q. Do you use the forwarder service in existence where their rate is higher than the rail rate?

A. Yes, we use that for a quick service rather than an express service because we received about the same service that we would by express, and we will take and pay the difference to get the service and we will make a savings between express and freight rate.

207 Q. Do any such examples come to your mind at this time where you use the forwarder and pay a higher rate than the rail rate?

A. Yes, we have several from the east, one of them, North and Judd from Stamford, Connecticut. We have merchandise shipped to those points by the carloading company which gives us a faster service and at the same time we make a saving between the freight rate and the express rate.

Q. You use the forwarder over the rail because of the superior service?

A. That is right.

Q. Can you give a comparison of the length of time it takes for a shipment to move in connection with a forwarding com-

pany as against the time consumed when handled by the rail shipper?

A. I have had shipments that I know of in particular from Springfield, Massachusetts, to Kokomo, Indiana, on the third morning delivery, whereas by rail it took six, seven, and eight days' delivery.

Q. Mr. Logan, what effect would it have upon your company if the forwarder were forced to cease the operation into Kokomo?

A. Well, to begin with, it would raise the cost of our inventory. We build our production a whole lot around this service we are receiving, and we specify goods to come in so much per day in order to keep the plant running, and if we didn't have this
208. service it would run the costs up into a higher inventory which we do not want to have now.

Q. In other words, the forwarder companies have played a part in scheduling productions at your plant?

A. Yes.

Q. Because of their dependable and regular service?

A. That's right.

Q. If the car-loading companies or forwarders were forced to cease operations into Kokomo, would it also force you to carry larger inventories?

A. It would.

Q. What would happen to the tonnage you are now giving to the forwarder companies if they were forced to cease business into Kokomo?

A. Well, the biggest part of it would divert to rail.

Q. Why do you think none of it would go to truck lines?

A. Well, we have found from our best experience that on the more distant points where you used more than two truck lines, it is not reliable and you cannot depend on your time of delivery.

Q. Do you use truck lines for your long-distant transportation?

A. No. We haven't found it practical from experience.

Q. What have you to say relative to your ability to trace shipments in connection with forwarding companies as against other means of transportation?

209 A. I have traced several shipments of the forwarding companies and they always are able to get the shipment located or get delivery of it within a very short time, practically within a day, or they were able to give us information so that we could tell our customers where the shipment was. On my inbound I am able to tell the purchasing agent and the stock department so that we can control our production from it.

Q. Can you get that service from truck lines or from the rail carriers?

A. No, we cannot. I haven't been able to so far.

Q. When you mention the products that you manufacture, do I understand you to say you manufacture roller skates?

A. Yes.

Q. Do those move in large volume?

A. They move practically all over the world, as far as that is concerned, and they will move anywhere from a hundred pounds to 10,000 pounds. But, it is all L. C. L., practically all of it.

Q. Have you had any recent shipments out of Kokomo, which would serve as an example of movements?

A. Yes, sir. A week ago today we had 18,000 pounds in L. C. L. shipments to the various parts of the United States.

Q. Out of that total of 18,000 pounds, how much of it was handled by carloading companies?

A. They were all handled by carloading companies.

210 Q. And were they picked up at your plant by a single truck?

A. They were.

Q. And shipments for every portion of the United States were contained in that one shipment on that day?

A. They were.

Q. The services rendered to you by the forwarding company, is that actually needed in your business?

A. We find it very essential in order to carry on our business on a lower-cost standpoint.

Q. Are there any other remarks that you care to make?

A. No, I believe not.

By Exam. LATER:

Q. Would the forwarders be able to render the type of service they are now giving you, if it were not for the use of trucks from your plant to the assembly or consolidation points?

A. No I do not believe they could render that service.

Q. In other words, if they had to ship your products by rail to the assembly point, is that where the loss of time comes in?

A. That is where most of the loss comes in. We are on an off-line point, and for us to depend on it to come from Indianapolis to us would mean a loss of time or even from Muncie by someone besides the truck, would mean a loss of time.

Exam. LATER. That is all.

211 Cross-examination by Mr. TURNEY:

Q. The same thing is true on the other end, isn't it?

A. Yes.

Q. If the point does not happen to be a large city, there would be a similar loss of time there?

A. Yes.
Q. And it is the truck that saves that time at each end?
A. Yes.
Mr. TURNEY: That is all.
(Witness excused.)

SHERMAN H. HOSLER was sworn and testified as follows:

Direct examination by Mr. TURNEY:

Q. What is your name?
A. Sherman H. Hosler.
Q. Where do you live, Mr. Hosler?
A. Aurora.
Q. What is your business?
A. I am connected with the Durabilt Steel Locker Company.
Q. What is your business with that company?
A. Traffic manager.
Q. You say you are traffic manager?
A. Yes, sir.
Q. What does your company ship in L. C. L. lots?
A. Storage cabinets, wardrobe cabinets, and lockers.
Q. Do you use forwarding companies?
212 A. Yes, sir.
Q. And rail L. C. L.?
A. Yes, sir.
Q. And trucks?
A. And carloads.
Q. Also carload shipments?
A. Yes, sir.
Q. You have heard the testimony this afternoon of the witness from Racine and from Columbus, Indiana, and Kokomo?
A. Yes, sir.
Q. Are there shippers who occupy position in the commercial world similar to yours?
A. Yes, sir.
Q. If you were asked the same questions that those witnesses were asked with respect to the matters involved, would your answers be substantially the same?
A. I believe they would be practically the same.
Q. You feel that the maintenance of the forwarding service is essential to the welfare of your business in your city?
A. Absolutely.
Mr. TURNEY: That is all.
Exam. LATER: That is all.
(Witness excused.)

A. A. CRAWFORD was sworn and testified as follows:

213 Direct-examination by Mr. TURNEY:

Q. What is your name?

A. A. A. Crawford.

Q. Where do you reside?

A. Aurora, Illinois.

Q. What is your business?

A. Stoves and ranges.

Q. What company?

A. Standard Gas Equipment Corporation.

Q. What is your position with it?

A. Manager of the Aurora Branch.

Q. Do you have anything to do with the traffic or the routing of your tonnage?

A. I do.

Q. Do you handle freight in L. C. L. and L. T. L. quantities?

A. Yes, sir.

Q. Do you use the railroad and the truck lines and the forwarding companies in shipments?

A. Yes, sir.

Q. Do you depend to any extent in your business upon the forwarders' services?

A. A great deal, especially from the east.

Q. How does the service compare to Aurora on L. C. L. shipments, we will say from New York?

A. By carloading we can get fourth day delivery into Aurora.

214 Q. Regularly?

A. Regularly.

Q. Dependably?

A. And it is dependable.

Q. All right.

A. By rail, maybe it is the fifth or sixth morning before we can get the shipment in.

Q. Well, it is at least one day longer if it is in first class condition and if it is not, it may be anything from there out?

A. From there out.

Q. Have you heard the testimony of the other shipper witnesses with respect to the forwarder service?

A. Yes, sir.

Q. You have heard their testimony with reference to the need for continuing the forwarder service and the desirability for the type of rate adjustment proposed in these tariffs?

A. Yes, sir.

Q. If you were asked the same questions as the witnesses from Racine, Columbus, Kokomo, and also from Aurora, would your answers be substantially the same as those answer they have given?

A. They would be.

Q. You are willing to adopt their testimony as your testimony?

A. Yes, sir.

Q. With respect to your business and your city?

215 A. Yes, sir.

Mr. TURNEY. That is all.

By Exam. LATER:

Q. The use of trucks from Aurora to the consolidation point, is that the place where you save a great deal of time?

A. It is.

Exam. LATER. That is all.

(Witness excused.)

LAWRENCE SIMONS was sworn and testified as follows:

Direct examination by Mr. BORN:

Q. You may state your name.

A. Lawrence Simons.

Q. Where do you live?

A. Columbus, Indiana.

Q. You are associated with what company?

A. Noblitt-Sparks Industries.

Q. In what capacity?

A. In traffic and sales.

Q. How long have you been with the company, Mr. Simons?

A. Eleven years.

Q. Is the principal office located at Columbus, Indiana?

A. Yes, sir.

Q. Is that where the principal plant is located?

A. Yes.

Q. Do you have other plants located closely to Colum-

216 bus, Indiana?

A. Yes, sir.

Q. Where are they located?

A. At Greenwood, Indiana; Franklin, Indiana; and Seymour, Indiana.

Q. What products do you manufacture?

A. Automobile parts and accessories.

Q. Does that include automobile heaters?

A. Arvin automobile heaters and Arvin automobile radios.

Q. Do you ship these products to all sections of the United States?

A. Yes, sir.

Q. Have you used the forwarder service in handling these shipments?

A. Yes, sir.

Q. Why do you use the forwarder service, Mr. Simons?

A. For expedient service and to meet competition which, in our business, like every other business, is extremely keen and our customers and our particular lines happen to be located in central points like Cleveland, Chicago, and Toledo, and points that can be reached directly by truck service, while we are on and off line points.

Q. How long have you been using the service of the forwarder?

A. For about thirteen years.

Q. Have you found it at all times to be satisfactory and
217 dependable?

A. Very dependable.

Q. Do you have any figures which would show the number of pounds that you have shipped out of Columbus, Indiana, or your other plants located closely to Columbus during the year 1937?

A. Yes.

Q. Can you give the figure representing the tonnage shipped by forwording companies out of Columbus, Indiana?

A. Let me get that straight. Is that outbound and inbound, or outbound?

Q. Well, let us take outbound first.

A. About eight millon pounds of outbound.

Q. Have the forwarding companies handled any of your inbound business?

A. Yes.

Q. How much of the inbound business did they handle during the year 1937?

A. Approximately four million pounds.

Q. Now, how do the rates charged by the forwarder compare with those published by the rail carrier?

A. There is exactly no difference; they are the same except in the cases of the west coast.

Q. Can you compare the service as given to your company by the forwarder with that given to you by the rail carrier?

A. Well, we found practically in all instances our service would run from 24 to 72 hours faster by forwarding companies.

218 Q. And you stated you have competition?

A. Yes, sir.

Q. Now, if this service into Columbus as given to you by the forwarder should be eliminated, would it have any effect upon your business?

A. It would.

Q. What effect would it have?

A. It would delay our shipments from this period of 24 to 72 hours which, in many instances, particularly our heaters and radios, which are extremely seasonal, would cause us loss of sales and it would necessitate the carrying of heavier inventories during the entire year.

Q. What would happen to this business you are now giving to the forwarder in case they can no longer serve Columbus, Indiana? Would it go to the rails or to the trucks, in your opinion?

A. The bigger portion of it would go to the rails.

Q. Why wouldn't it go to the trucks?

A. Because in our experience, truck lines are not in position to handle long hauls. That is, by long hauls I mean in the United States in excess of 300 or 350 miles.

Q. Is there a definite need by your company for the continuance of the services by the forwarders?

A. Yes, sir, there is.

Q. Columbus is an off line point?

A. It is.

219 Q. Are you acquainted with the manner in which the shipments are handled between Columbus and Indianapolis when shipped over the forwarder service?

A. I am.

Q. How is that handled?

A. By common carrier trucks.

Q. By the use of those trucks, do you know whether or not there has been any speeding up in the service?

A. Definitely, yes.

Q. Do you believe that there is a need for the continuance of the service of the truck lines in connection with the forwarding companies?

A. Yes, sir.

Q. Do you believe there has been a coordination brought about between the truck and rail by use of this service?

A. Yes.

Mr. BORN. I believe that is all.

Exam. LATER. You are excused.

(No response.)

Exam LATER. You are excused.

(Witness excused.)

LESTER KOSSMANN was sworn and testified as follows:

Direct examination by Mr. TURNEY:

Q. What is your name?

220 A. Lester Kossmann.

Q. Where do you reside?

A. Sheboygan, Wisconsin.

Q. What is your business?

A. I am auditor for the M. J. Seiwert Forwarding Company.

Q. One of the respondents in this case?

A. Yes, sir.

Q. Did you participate and collaborate with Mr. Girard in the preparation of a cost analysis of the operations of that company?

A. That is right.

Q. You have seen the exhibit which is numbered 8, which was offered in evidence and which contains that cost analysis, have you?

A. That is right.

Q. Are the figures and the statistics that are stated in the exhibit for the account of your company true and correct?

A. That is right.

Q. From the standpoint of your company, as reflected by your books, is the traffic which you handled for the freight forwarding companies profitable or unprofitable?

A. It is profitable.

Q. Are you familiar with the rates?

A. Well, to a certain extent. My knowledge of rates is rather limited.

221 Q. Well, do you know whether or not the rates in this suspended tariff are the same as the rates upon this traffic that you now receive that division?

A. I believe so.

Q. Do you feel that if you continue to handle traffic similar to that which you now handle for the forwarder companies, and by that I mean traffic breaking bulk at Chicago, being scattered at Chicago, at the rates proposed in the tariff, that it will be a profitable and compensatory service for your company?

A. It will be.

Q. In your judgment, will it be injurious to your company and to your service should the traffic which you are now receiving from the freight forwarding companies be lost?

A. Well, I would not say that.

Q. You would not?

A. No, sir.

Q. You mean you would not miss the traffic?

A. Well, yes; we would miss the traffic. We would miss the traffic at the rates that are being proposed. What I mean is this: We need the traffic at the rates which are proposed to continue our operations. If we lost our traffic at those rates it would very seriously hamper our operations.

Q. Well, that is what I want. I did not make my question clear. I am sorry, sir. Well, as I understand you now, if
222 your company were deprived of the revenue which you are now receiving, it would seriously affect your company and your service?

A. That is correct.

Mr. TURNEY. That is all.

Exam. LATER. Your are excused.

(Witness excused.)

JOSEPH F. DREXLER was sworn and testified as follows:

Direct examination by Mr. TURNEY:

Q. Will you state your name?

A. Joseph F. Drexler.

Q. What is your company?

A. Wisconsin Fox Valley Transit Company.

Q. That is one of the respondents in this case?

A. Yes, sir.

Q. Where do you live?

A. Oshkosh, Wisconsin.

Q. What is your position with that company?

A. Auditor.

Q. Did you assist or collaborate with Mr. Girard in the preparation of the cost and the traffic analysis of your company's operations as shown in Mr. Girard's Exhibit No. 8, which has been introduced in evidence?

A. Yes; I did. In fact, he has the privilege of using our books at any time to compile whatever figures he sees fit.

223 Q. Well, did you assist in the compilation of those figures?

A. Yes.

Q. Did you examine the exhibit after it was prepared?

A. Yes, I did.

Q. State whether or not the facts and figures and statistics contained in that exhibit are true and correct as shown by the books of your company?

A. They are.

Q. In your judgment, based upon the information as received by you as auditor of the carrier, are the rates which you are receiving for the handling of forwarder traffic fully compensatory and profitable to your company?

A. Yes, sir; I would say they are.

Q. Would it continue to be profitable for you to handle that traffic and the traffic of a similar nature, that is, traffic breaking bulk at Chicago and L. C. L. traffic moving from points on your line for concentration into carload lots at Chicago?

A. Yes, it would.

Q. At the rates which are proposed in the tariffs?

A. Yes, it would.

Q. Would the law of this traffic which is being handled at rates identical with those in the suspended tariff, adversely affect your company?

A. Yes, it would.

224 Q. Would it put a hole in your pocket?

A. Well, I would say it would. I don't know what we would replace it with.

Q. Would it affect your service?

A. In what respect?

Q. Well, I mean by that, would it reduce your load, reduce your trucks, and cut off men?

A. Yes, it would.

Q. And cut salaries?

A. Yes.

Q. All the unpleasant things of life in this business.

A. Yes, it would.

Q. You are familiar with the rates which are proposed in the suspended tariffs, are you?

A. No, I am not.

Mr. TURNEY. That is all.

Exam. LATER. You are excused. Thank you.

(Witness excused.)

P. E. MOGENSEN, was sworn and testified as follows:

Direct examination by Mr. TURNEY:

Q. Your name is P. E. Mogensen?

A. Yes, sir.

Q. What is your business, Mr. Mogensen?

A. I am the owner and operator of the Service Transport
225 Truck Company, Inc.

Q. You are the company, including the Inc.?

A. Yes, sir.

Q. Are you familiar with the study and analysis of your operations, your costs, and statistics that were made by Mr. Girard, and which are incorporated in his Exhibit No. 8 in this case?

A. Yes, fairly so.

Q. Did you collaborate with Mr. Girard in the preparation of that exhibit?

A. Yes, Mr. Girard had full access to our records which he may desire to use at any time in compiling any statistical information which might be required to better our service and business.

Q. Well, aside from any dignified acquiescence, did you also enthusiastically aid him in the preparation of that material?

A. Yes, sir; very much so.

Q. You collaborated with him?

A. Yes, sir.

Q. Now, Mr. Mogensen, how much of your business consists in the handling of traffic, which we have been calling forwarder traffic?

A. Forty to 50 percent of my business is forwarder business.

Q. From the standpoint of the desirability of traffic, is it the most or the least desirable traffic which your company

226 handles?

A. Well, I would say that it is the most attractive and desirable business that it is possible to get.

Q. You mean it is the most remunerative business, service considered, that you handle?

A. Yes; I would say so.

Q. Now, are you familiar with the rates which are now charged?

A. Yes, sir.

Q. You have heard Mr. Girard's testimony and also Mr. Johnson's testimony with respect to the history of those rates?

A. Yes, sir.

Q. Is the testimony of those gentlemen on the subject correct?

A. Yes, sir.

Q. You are also familiar with the rates which have been suspended in the tariffs involved in this case, are you?

A. Yes, sir.

Q. They are the same, I take it?

A. Yes, sir.

Q. How long has your company been engaged in the trucking business?

A. Seventeen years.

Q. In your judgment, are the rates which are now charged, as well as those which are suspended, reasonable and compensatory for the service involved in the transportation covered by the tariffs?

227 A. Yes, I would say so at the present time.

Q. You mean by that——

A. I will try and get more if I can.

Q. That is not limited to this traffic?

A. It is not.

Q. What effect would the cessation of the forwarder operations in the off line territory served by your company have upon your company and its service and operations?

A. If I should lose that tonnage?

Q. Yes, sir.

A. Well, it would handicap us seriously. In fact, it would disrupt our whole organization.

Q. Well, will it be more unpleasant than that?

A. Yes. The chances are that we probably would be put in a position where it would be difficult for us to continue in operation.

Q. From a transportation standpoint, do you feel that the method by which your trucks are coordinated with the rail and truckload operating service out of Chicago is, from the public standpoint and from the operator's standpoint, the efficient and serviceable way to handle that traffic?

A. Yes, I do. In fact, I have sold such service to all the shippers in Kenosha and Racine on that basis.

Q. Do you feel that it is a better way to handle those long haul shipments than it would be to attempt to participate
228 in through rates either with other truck companies or even with rail companies?

A. Yes. I think so. In fact, I know so. Because, there isn't a service to any of the long haul points over truck line connections that would be feasible or attractive to the shipper, due to the fact that you might have a three-line haul or a three-way haul and even a two-way haul is out of the question because it has not been proven that on a long haul the same service can be rendered as that which is serviced by the forwarder.

Q. Well, wouldn't the same thing be true even if you made joint rates with the railroad? Doesn't this method provide a more economical and expeditious service than you could get even if you coordinated your service with the railroad direct?

A. I would not care to answer that because I do not believe I have enough experience in that way to answer it.

Exam. LATER. I do not think he has been qualified.

Mr. TURNEY. That is all.

(Witness excused.)

P. F. PEICH, was sworn and testified as follows:

Direct examination by Mr. TURNEY:

Q. What is your name?

A. P. F. Peich.

229 Q. Where do you reside?

A. Chicago Heights, Illinois.

Q. With what company are you connected?

A. The Chicago Heights Trucking Company.

Q. That is one of the respondents in this case?

A. Yes.

Q. Where does that company operate?

A. It operates in the metropolitan area around Chicago, principally on the south side.

Q. Did you collaborate with Mr. Girard in the preparation of the cost and traffic analysis of the operations of your company which are contained in his exhibit No. 7, which has been introduced in this case?

A. Yes, sir.

Q. You have seen the exhibit since it has been completed?

A. I have.

Q. And you have examined the figures that are shown therein?

A. Yes, sir.

Q. Are the figures and statistics of your company's operations set forth in that exhibit true and correct as reflected by your books?

A. They are.

Q. How long has your company been handling forwarder traffic?

A. It has been handling forwarder traffic for the past ten years.

230 Q. Exhibit 7, introduced by Mr. Girard, would indicate that the forwarder traffic on the whole is the most remunerative traffic which your company handles. Do you agree with that?

A. Yes, sir.

Q. That is from a practical standpoint?

A. Yes, sir.

Q. How long have you charged the rates which you are now charging to forwarders for this traffic?

A. Practically all during the period that we have been hauling for them.

Q. Practically about ten years?

A. Yes.

Q. The rate which is suspended in these tariffs is practically identical with that past rate, is that it?

A. That is right.

Q. In your judgment is the rate proposed in this case a reasonable and compensatory rate for the service which your company performs?

A. Yes; it is.

Q. And which it will perform in connection with the traffic to which the proposed tariff is applicable?

A. Yes.

Q. Does the business which you are handling for the forwarding companies constitute a substantial part of the business which your company handles?

231 A. Yes, it does.

Q. Would your company and its service be seriously or adversely affected, should you lose that traffic?

A. It would be quite adversely affected.

Q. Would your service be affected also?

A. Yes, it would.

Q. Do you agree with Mr. Girard's statement that in the handling of the traffic that would be subject to this tariff, a substantially less service is necessary to be performed by your company than is true of local traffic, due to the practical elimination of one terminal service in the City of Chicago?

A. That is right.

Q. And that the actual fact is even more favorable to this traffic than indicated by these statistics which assign both terminal services in the costs?

A. That is right.

Mr. TURNEY. That is all.

By Exam. LATER:

Q. I want to ask you one or two questions. Is there any other type of traffic that you handle on local rates on which the handling or the service performed by you is comparable to the carloading traffic?

A. Not consistently, no. There might be individual cases of a single movement that would be comparable, but not the general movement.

Q. In other words, it is the exception rather than the

232 rule when you have such movements?

A. Yes.

Q. Now, the rates which you get for rendering that type of service, how do they compare with the rates which you get from the forwarder?

A. Generally the rates are lower than the rates that we get from the forwarder.

Q. Generally it is lower.

A. Yes. In order to explain that, or make that clear, I might say that we happen to have much freight in the territory that we serve that is low rated merchandise that moves locally from one point to another on the line.

Q. You are comparatively a short haul carrier, aren't you?

A. Yes, sir, forty to fifty miles would be the maximum.

Q. Do you know about the average length of your hauls?

A. The average length would run around 42 or 43 miles.

Q. Now, how about the forwarder traffic? What, about, is the average length of haul that you have on that?

A. It would run more nearly 27 or 28 miles.

Q. Your other traffic would run about 40 miles?

A. Yes, sir.

Exam. LATER. That is all.

By Mr. TURNEY:

Q. There is just one question that the Examiner's interrogation brought out. The manner in which this forwarder
233 traffic is handled is similar in some respects to the way you handle interline truck traffic, is it not?

A. Yes.

Q. That is about the same amount of service that is required in both cases?

A. That is right.

Q. Now, this analysis of your company shows that the forwarder rates pay you about 2½ times as much as you get from your interline traffic?

A. Yes, sir.

Q. For practically the same service?

A. Yes, sir.

Mr. TURNEY. That is all.

Exam. LATER. You are excused.

(Witness excused.)

HARRY A. MUNTZ was sworn and testified as follows:

Direct examination by Mr. TURNEY:

Q. What is your name?

A. Harry A. Muntz.

Q. Where do you live?

A. Elgin, Illinois.

Q. What company are you connected with?

A. Elgin Storage and Transfer Company.

Q. That is one of the respondents in this case?

A. Yes, sir.

234 Q. Did you collaborate with Mr. Girard in the preparation of the cost and the traffic analysis of your company?

A. Yes, sir.

Q. The figures and statistics shown in his exhibit with respect to your company are true and correct?

A. Yes, sir.

Q. Without rehashing all this testimony, your company operates in the same territory as the Chicago Heights Company, does it?

A. Not in the same territory; no.

Q. Well, I mean in the same metropolitan area.
A. Yes.
Q. Taking the same class of business, that is, conducting the same class of operation?
A. Yes.
Q. It is more or less of an extended collection and delivery service?
A. Yes.
Q. Now, are the facts which Mr. Peich has testified to with respect to that company also generally true of your operations?
A. They are.
Q. And if I should ask you the same questions about your company in the examining of this traffic that I asked Mr. Peich about, would your answers be substantially the same?
235 A. Yes, sir; except for the length of time we have served the forwarding companies.
Q. What change would you make?
A. Well, we have served them since starting operations.
Q. And it has been satisfactory?
A. Yes, sir.
Q. You think the rates which you now receive and which are proposed in this tariff are reasonable and compensatory rates?
A. Yes, sir.
Q. The traffic is a valuable traffic and it would have serious effects on your operation if you lost that traffic?
A. Yes.
Q. And you adopt the testimony of Mr. Peich in all other respects?
A. Yes.
Mr. TURNEY. That is all.
Exam. LATER. Are there any other questions?
(No response.)
Exam. LATER. That's all; you are excused.
(Witness excused.)

J. W. PETERS was sworn and testified as follows:

Direct examination by Mr. BORN:

236 Q. Will you state your name and your place of residence?
A. J. W. Peters, Anderson, Indiana.
Q. And you are associated with what company, Mr. Peters?
A. Delco Remy Division of General Motors Corporation with plants at Anderson, Indiana; Muncie, Indiana; and Bloomfield, New Jersey.
Q. In what capacity are you associated with that company?

A. Traffic manager.

Q. You have been traffic manager since 1926, have you not?

A. Yes, sir.

Q. What products do your companies manufacture?

A. We make everything electrical for the automobile excepting lamps. That includes the electric starting motor, the generator, horns, switches of all types, complete wiring, coils, relays, distributors and a number of other articles that are smaller than those, but that constitutes practically the line of commodities manufactured. Oh, I forgot storage batteries. That is the most important thing.

Q. Do you ship these products to all sections of the United States?

A. In less than carload quantities we ship to all parts of the United States. In carload quantities, 99 percent of the carload movement is to automobile assembly plants, or automobile manufacturing plants.

Q. Now, with respect to these less than carload, or less
237 than truckload shipments, have you ever used the forwarder service in making those shipments?

A. The forwarder service is used on making less than carload shipments wherever it is possible to use the forwarder. The fact of the matter is, I have had prepared and placed in our shipping department a list of all the points to which service is available by the several forwarding companies. Whenever any unrouted shipment is in the shipping department, the first action of the shipping clerk is to refer to this list and if the name of the town or the name of the destination appears as a destination to which any forwarder can be used, that medium is used.

Q. Why do you use the forwarder service, Mr. Peters?

A. Our experience has shown that we can get considerable better transportation service, a complete transportation service, if you please, by the use of the forwarder where we cannot get it by using the available rail service.

Q. How long have you been using the forwarder service, if you recall?

A. The forwarder was being used at the time I came to the plant at Anderson, and that is roughly about twelve years ago. They were using it before that and I would not know just how far back to go beyond that, but I know it was in extensive use at the time I arrived there.

Q. And you have continued to use it all through these
238 last twelve years?

A. We expanded our use of it very considerably.

Q. Have you found it at all times satisfactory and dependable?

A. It has been entirely dependable and very satisfactory.

Q. Do you have branches located in the various sections of the United States?

A. Yes, sir; we have 27 of them located from the Atlantic to the Pacific and from the Gulf almost to the Canadian border. Dallas and New Orleans on the south, Minneapolis and—well, that is all on the north; Boston, Philadelphia, and New York on the east; San Francisco and Los Angeles on the west coast; and in the central part of the country we have Kansas City, St. Louis, Cincinnati, Denver, Buffalo, Detroit, Cleveland, Pittsburgh, and I believe I mentioned the most important. Oh, I forgot Omaha, Milwaukee, and Des Moines. In all, there are 27 branches.

Q. How do you ship to these branches?

A. With the exception of Cleveland, Indianapolis, St. Louis, Pittsburgh, and Cincinnati, we ship via a freight forwarder.

Q. In other words, the longer hauls are all by the freight forwarder?

A. That is right.

Q. Now, have you made any study as to the actual pounds that you have turned to the forwarder from your plant out-
239 bound during the year 1937?

A. An actual tabulation was not made of the full year. However, using representative months and weighted averages, I can very conservatively state that we have shipped approximately ten million pounds, or did ship approximately ten million pounds outbound, not only to these branches but to all the other points throughout the United States during that year.

By Exam. LATER:

Q. 1937?

A. 1937; yes, sir.

By Mr. BORN:

Q. In other words, your shipping is not confined to your branches?

A. No; but the heaviest shipping quite naturally is to the branches, but the other shipping goes to practically any point that you might think of. Our shipping goes to wherever there is a repair garage; that is, our service shipping goes to practically any point that has a repair garage or service station.

Q. And among those shipments, a great many of them are rush shipments?

A. Oh, they all are.

Q. Now, Mr. Peters, how do the rates as charged by the freight forwarders compare with those charged by other means of transportation?

A. With very few exceptions, the forwarder rates are
240 identical with the rail rates.

Q. Are they higher or lower than the express rates?

A. They are lower than the express rates.

Q. Have you at any time used the forwarder service where the forwarders' rates were higher than the rail rates?

A. I could not answer that as to outbound business. The fact of the matter is, I do not know of any instance, although I would presume on the outbound that has happened. I know that on inbound business we have used forwarders and paid them a higher rate than the available rail service. As an example, I might cite Townley, New Jersey, which is located on the Lehigh Valley Railroad, and from which point we receive heavy and frequent shipments of copper powder. Copper powder is expensive. We do not like to carry any heavier inventory on it than is necessary. We use the forwarder service because an actual comparison of transit times has proven to us that we can save from three to five days in transit by using the forwarder versus the available rail L. C. L. service from that point.

By Exam. LATER:

Q. Before you leave that, where do you get this copper powder?

A. At Townley, New Jersey.

Incidentally, the forwarder charges a third-class rate, which is the classification basis for copper powder, while the
241 rail carrier has had for several years an L. C. L. commodity rate of column 60.

By Mr. BORN:

Q. How long does it take the forwarder to get those shipments to your plant at Anderson, Indiana?

A. Third morning regularly from Townley, New Jersey.

Q. Would this comparison you have made between forwarder service and rail service apply in connection with shipments to other points in the United States?

A. I might cite another example from Murdock, Connecticut. We have ball-bearing shipped from there on which we use forwarder service. We must pay forwarder second-class rates. The rail carriers publish a third-class rate. We pay the second-class rate in order to get a saving of about 50 percent in transit time on those bearings. Bearings, incidentally, are also a commodity that is very expensive, and we do not care to have any more inventory on those than is absolutely necessary.

Q. What is the time in transit, say on a shipment from that point to Anderson, Indiana, in connection with a forwarding company, as compared with a rail carrier?

A. The forwarder will give us dependable fourth morning delivery from Murdock, and we have had shipments that have

reached us on the third morning and more often on the third afternoon, although we plan on a fourth-morning delivery.

242 On the other hand, the best available rail service we have been able to develop has been from the eighth to the tenth morning delivery from that point. Of course, Murdock, is pretty much of a local point on the New Haven, and we are very much of a local point on the Pennsylvania.

Q. Do you at times make C. O. D. shipments?

A. Oh, yes; particularly to these garages and service stations that I have referred to. We have very many C. O. D. shipments.

Q. What have you to say as to the financial responsibility of the forwarding company in the handling of these C. O. D. shipments?

A. Our credit department has investigated the forwarding companies and they tell me they consider them fully responsible and that as far as they were concerned, C. O. D. shipments had to move either by a forwarder, by rail, or if by truck, I would have to guarantee that the truck was reliable. That, of course, is a position into which I do not care to get myself unless I am pretty sure of what I am doing. The result is that we do not ship any C. O. D. shipments by truck of any consequence. I would not say "any" but our shipments of C. O. D.'s by truck are very, very limited.

Q. Now, if that service that is now being rendered by the forwarding companies were to cease at Anderson, Indiana, would that have any effect upon your business?

243 A. Well, of course it would affect us in this way: That we would not have the service that we now have and we could not, particularly in replacement parts which are needed on the day they are ordered, we could not compete with the competitors of ours who are located where the forwarder has his terminals. As an example, Chicago or Toledo, Cleveland or St. Louis. Into those cities the forwarder has a terminal and our competitors always have that forwarder service available.

Q. You do have competitors in your business?

A. I should hope to say so.

Q. Where are they located?

A. In towns I have just mentioned, among others. We also have them in New York, we have them in Boston, and we have them in Omaha.

Q. And that service is an important element that enters into your business, is it?

A. Absolutely.

Q. And the forwarder has been able to give that service?

A. Yes; a service that we have never been able to secure from any other transportation agency.

Q. What would happen to that business if the forwarder should withdraw from Anderson, Indiana? Would that business go to the trucks or the rails?

A. The trucks would handle less business under those circumstances than they do now for the reason that these operators
244 who work in connection with the forwarding companies, in making the pick-ups, would no longer handle the business. It would move by rail mostly in less than carload quantities and, naturally, we would seek means of combining shipments in order to get the service and also expedite the movement, and that is the same thing as securing the service. We could possibly make combinations on such points as Philadelphia and New York, or New York and Boston, or St. Louis and Kansas City, under certain circumstances. San Francisco and Los Angeles, Atlanta, and New Orleans—Such combinations might be brought about and to that extent there might be some carload movement replacing this forwarder traffic, but I would imagine at least 80 percent of it would go to a rail movement in L. C. L. service.

Q. Do you know how these shipments are being handled out of Anderson at this time when shipped in connection with a forwarding company? Are they being handled out by truck line?

A. Oh, yes; all our shipments are being picked up by trucks for the forwarder.

Q. And they are handled in Muncie?

A. Muncie, mostly. There are some of them that go into Indianapolis but I would think 99 and 99/100 per cent go through Muncie.

Q. Do you know what carrier picks up and delivers to that plant in Anderson?

245 A. Wagner Trucking Company, who are respondents in this suit, pick up and deliver in Anderson.

Q. Well, now, is it your belief that use of the truck service has expedited or speeded up the service as rendered by the forwarder to the public?

A. Undoubtedly. My view of the matter is that the coordination of the truck and rail service has produced the very excellent service that the forwarder has been able to give and is undoubtedly one thing that prevents the rails from giving a comparable service.

Q. Would you say there is a definite need by your company for a continuance of the forwarder service?

A. Absolutely. We do not hope we will lose it.

Q. Do you believe also that when you give business to the forwarder, you are strengthening the common carrier by motor truck in that particular field?

A. Oh, we certainly do. We sure do.

Q. And you need their service in that field also?

A. Yes, sir.

Q. Have you ever had any experience in shipping long haul by truck lines?

A. Not recently. In answer to repeated solicitations, we did use, experimentally only, trucks out of New England and trucks out of the southwest. We did not give any outbound ship-
246 ments to the trucks because we did not want to get into trouble with the service, but we did use inbound shipments in that way where we could control our supplies so that if we had any difficulties in receiving our shipments we could help ourselves out. The results of those experiments would not, under any circumstances, warrant the use of trucks for that kind of service.

Mr. BORN. That is all.

Exam. LATER. You are excused.

(Witness excused.)

WILL C. PIKE was sworn and testified as follows:

Direct examination by Mr. BORN:

Q. What is your name?

A. Will C. Pike.

Q. What is your address?

A. Muncie, Indiana.

Q. What is your business?

A. Traffic manager.

Q. Are you traffic manager for the Perfect Circle Company?

A. Yes, sir.

Q. Where is their plant located?

A. Hagerstown, Indiana.

Q. What do they manufacture?

A. Piston rings and piston expanders.

Q. Do they ship their products to all sections of the
247 United States?

A. Yes, sir.

Q. Do you know what means of transportation they use in making those shipments?

A. We use the forwarder service almost exclusively except for a few Indiana points that are local.

Q. Do you know how long they have been using those forwarder companies, or using this forwarder service, the approximate number of years?

A. Since 1920 or 1921, when it first became available, when the stations were established at Muncie, Indiana.

Q. It was virtually upon your persuasion that those stations were established at Muncie, Indiana, wasn't it?

A. I think it was; yes. The service, a valuable one to have, and I knew the nature of it and I took the initiative of having the stations established at Muncie.

Q. Can you give me an estimate of the total number of towns shipped by the Perfect Circle Company, both outbound and inbound during the year 1937, in connection with the forwarder service?

A. There would be no inbound but I know that I am perfectly safe to say a million pounds.

Q. How do the rates charged by the forwarding companies compare with those charged by the rail carriers?

A. They are practically the same.

248 Q. Is the service an important item to your company?

A. It is, indeed.

Q. How does the service tendered by the forwarding company compare with that rendered by other transportation agencies?

A. Well, it is far better because of the less transit time.

Q. Now, do you know how shipments are handled from Hagerstown, when shipped in connection with a forwarding company?

A. Yes, sir.

Q. Are they handled by truck out of Hagerstown?

A. Yes; to Muncie.

Q. What truck line handles those shipments, if you know?

A. Wagner Trucking Company.

Q. And they are respondents in this case?

A. Yes, sir.

Q. Now, if this service as rendered to you by the forwarding company should be discontinued into Hagerstown, would that have any effect upon your business?

A. Yes; it would have a very adverse effect in several different ways. Possibly the most important would be this: We would have to make a complete new setup on transportation and there would be no service available that would come anywhere near replacing the forwarder service.

Q. In other words, your business is coordinated with services rendered to you by the forwarder?

A. Yes. The transportation is a very important factor.

249 Q. Now, if the forwarder were to cease giving service into Hagerstown what would happen to the business that is now being handled by them? Would it go to the rail or to the truck?

A. Well, that would be my question. Frankly, I do not know just what we would do, but we would have to make some kind of a setup with the Pennsylvania Railroad because Hagerstown is a local point, and, of course, since the trucks and rails do not have

a through rate we would have to put up with what we could work out with the Pennsylvania folks.

Q. Well, now, have you had any experience, Mr. Pike, in using truck lines for long hauls?

A. Yes, I have had experience with them, but not for the Perfect Circle Company. But, I have had experience with them and it will not work for a long haul. Now, we have excellent service out of Muncie. We have overnight service to Indianapolis, Louisville, Chicago, Detroit, Lansing, Cleveland, Columbus, Ohio, and we have about sixteen or eighteen hours' service to St. Louis and eighteen or twenty hours' service to Pittsburgh and Buffalo and through trucks to all those points.

Q. Well, now, when you get beyond that service, what service do you have?

A. Forwarders.

Q. Do you use forwarders for the hauls approximately 300 miles or more?

250 A. Yes.

Q. And they are the only ones in the field of transportation that you know of that can give prompt and efficient service?

A. Yes, sir.

Q. For your hauls of 300 miles or longer?

A. Yes, sir.

Q. Now, is the service as rendered to your company by the forwarders actually needed by your company?

A. Oh, it is, definitely.

Q. I believe that is all unless you have some remarks that you would like to bring out, Mr. Pike.

A. Well, I would like to say that it seems that transportation—well, it doesn't seem; it is a matter of fact that transportation is produced for the benefit of the public and inasmuch as the Perfect Circle Company is a part of that public, the shipping public, I feel that we have a right to insist that this type of service be kept available to us. It is essential and we would have to increase stocks, we would have to increase raw material, stocks, inventory, and I do not know what would happen. Well, it would disrupt the business for quite some time until we could get something else and get on a new basis, but any new basis that would be feasible would not compare in any manner with the present forwarder service.

251 Q. Do you believe that this coordination with the forwarder as developed between truck and rail has speeded up the service to these off-line points?

A. Oh, yes; there is no question about that.

Mr. Born. That is all.

By Exam. LATER:

Q. On an off-line point, it gives you practically the same service that they have at these other points where you might have competition, such as Chicago and Indianapolis?

A. Yes; practically the same.

Q. By the use of the trucks in getting the merchandise into these consolidation points you get practically the same benefit that they do?

A. Yes.

Exam. LATER. That is all. If there are not any more questions, you are excused.

(Witness excused.)

Exam. LATER. We will now stand adjourned, gentlemen, until ten o'clock tomorrow morning.

(Where upon at 5:30 o'clock P. M., February 24, 1938, adjourned to February 25, 1938, at 10:00 o'clock A. M.)

252 CHICAGO, ILLINOIS, *February 25, 1938.*

Before: A. E. LATER, Examiner, Interstate Commerce Commission.

* * * * *

Hearing resumed at 10:00 o'clock A. M.

* * * * *

Appearances: As heretofore noted.

PROCEEDINGS

Exam. LATER. The hearing will come to order.

Mr. TURNEY. I will ask Mr. Girard to resume the stand.

EARL GIRARD resumed the stand and testified as follows:

Direct examination by Mr. TURNEY:

Q. Mr. Girard, you had completed your testimony with respect to Exhibit 7, and we had started to discuss a similar exhibit with respect to the Wisconsin tariff territory, which I believe is Exhibit 8, is that correct?

A. That's correct.

Q. Now, will you explain how this exhibit 8 was compiled?

A. I went directly to the books and accounts of four of the principal and typical respondents handling traffic subject to the suspended tariffs and analyzed their operating costs and traffic statistics for the year 1937. In this, of course, I was assisted by an expert accountant and the staff of each of the carriers.

Q. Will you state briefly what this exhibit 8 shows?

253 A. This exhibit shows on the first page a sumary of the operations of the four carriers. The average expense——

Q. Now, permit me to interrupt right there. The totals shown in the first oclumn are weighted averages, are they not?

A. That is correct.

Q. Of the four different operations?

A. Yes.

Q. Is it your judgment the weighted average of the four operations would be typical of the entire territory?

A. Yes, sir; they would be.

Q. Proceed with the answer now, showing the average costs and expenses as you have broken them down on that page.

A. The average expense per hundredweight of all four carriers was 30.43 cents varying from a minimum of 26.36 cents to a maximum of 37.53 cents. The average expense per truck mile was 29.85 cents, varying from a minimum of 26.36 cents to a maximum of 37 cents.

Q. Now, what does the second part of the exhibit, the part in the center of the page, show?

A. A breakdown of these unit costs between the Chicago terminal service, other terminals service, and the highway or over-the-road or line-haul service expenses in cents per hundred pounds.

Q. Now, dealing with traffice which will be handled under the proposed rate, which is now being handled in the method
254 which you have described, would you say that the average haul of this so-called forwarded traffic is the same or at least no greater than the average haul of other traffic handled by these companies? By the trucks, I am talking about.

A. I would say they would be the same.

Q. The operations of the companies are comparatively simple, are they not? They are really just between Chicago and one or two important points in each case?

A. That is right. They are all direct terminal to terminal operations, serving a few isolated intermediate points directly on the routes.

Q. Now, will you explain the third part, which is a comparison of the rate and unit costs applicable to this particular traffic?

A. It is a comparison of the proposed rate or the suspended rate with the cost of providing service. On an average, the proposed rate is 34.67 cents, varying from a minimum of 30 cents to a maximum of 40 cents, and the average total cost is 28.31 cents, which varies from a minimum of 23.62 cents, to a

maximum of 35.91 cents, and showing that the profit of the four carriers averages 6.36 cents per hundred pounds, which also varies from a minimum of 4.09 cents to a maximum of 7.08 cents.

Q. Now, the proposed rate as shown on this page is the weighted average of the present charges, it is not?

255 A. Yes.

Q. Of the four carriers?

A. Yes.

By Exam. LATER:

Q. That is the proposed rate?

A. Yes.

Mr. TURNEY: Yes.

Exam. LATER: That is a weighted average rate.

Mr. TURNEY: Of the present charges, which are identical with the suspended charges.

Exam. LATER: I see.

By Mr. TURNEY:

Q. Now, will you explain in detail just how this study was made?

A. I can best do this by discussing page by page the study pertaining to the Service Transport Company of Racine, Wisconsin.

Q. That is the second book in that exhibit?

A. That is correct.

Q. What was the total operating expenses of this company during 1937?

A. $157,588, of which——

Q. Pardon me just a minute. We are starting with page 2, Mr. Examiner.

Exam. LATER: Yes. That is that recapitulation sheet.

Mr. TURNEY: That is right.

The WITNESS (continuing): Of which $43,918 was di-
256 rectly allotted to road-haul service; $36,263 to terminal expenses at Racine, Wisconsin; $36,768 in terminal expenses at the Chicago terminal, and $40,639 in administrative or overhead expense.

By Exam. LATER:

Q. Right at that point, would it be possible to explain briefly the service of this Service Transport Company? Could you state where it operates from and to? Or, have you got that later on?

A. You will find, Mr. Examiner, on page 17 of this section of the exhibit, a map showing the operation of the Service Transport Company, which I will explain as being in operation between Chicago, Illinois, on the one hand, the extreme north-

ern terminal of Racine, Wisconsin, on the other, serving intermediate points between those two points, particularly Kenosha, Wisconsin. The distance between Chicago, Illinois, and Racine, Wisconsin, is 65 miles instead of 69 miles as shown in the exhibit, and between Chicago, Illinois, and Kenosha, Wisconsin, the distance is 58 miles. I ask that that correction be made on that page, if you do not mind.

By Mr. TURNEY:

Q. Would you say that the great bulk or practically all the business is between Chicago and Racine?

A. 95 percent of their business is between Chicago and Racine.

Q. And the same thing would apply also to the forwarder traffic?

257 A. The majority would be greater. I would presume that 99 percent of the forwarder traffic handled by this particular carrier leaves from or goes to Racine, Wisconsin.

Q. In the case of the road-haul costs, and the terminal expenses at Racine and Chicago do I understand that these costs are the direct expenses of those services?

A. They are.

Q. They are not joint expenses or any proportionate, they are the direct expenses incurred of those three services?

A. That is correct.

Q. Your proportional or joint expense you have labeled administrative or overhead expense, is that correct?

A. Yes.

Q. Now, how did you distribute this administrative between the two terminals and the road haul service?

A. We distributed that particular cost uniformly on a mileage basis.

Q. Now, Mr. Girard, on that point, you distributed the overhead cost in the case of the Service Transport Company, as shown in this exhibit, and based that on a direct mile basis.

A. That is correct.

Q. The other three companies, that is, the Royal Transport Company, and the Wisconsin Fox Valley, you didn't have the direct truck miles and the terminals available, did you?

A. That is correct.

258 Q. How did you distribute the administrative cost of those companies?

A. On a dollar value.

Q. Well, you mean by that, on the ratio of direct expenses?

A. On the ratio of direct expenses using the dollar as the unit.

Q. Well, that necessarily follows. Now, did you make a similar

distribution of the overhead expense in the case of this company to determine what the difference was between the truck-mile basis and the direct-expense basis of proportionate?

A. I did.

Q. What difference did it make in the forwarder cost?

A. A very, very slight difference. In fact, a negligible difference.

Q. As a matter of fact, it was less than one-quarter of one cent per hundred pounds, wasn't it?

A. That is correct.

Q. You have that breakdown, if it is desired?

A. That is correct.

Q. Now, where do you show the detail of the direct expenses?

A. This is shown on pages 3 to 6, both inclusive.

Q. That is the line haul, is shown on page 3, Racine Terminal by primary accounts on page 4, and the Chicago Terminal by primary accounts on page 5.

A. And administrative on page 6.

Q. Administrative costs or overhead, joint costs, on page 6?

259 A. That is correct.

Q. Now, what do you show on page 7?

A. On page 7 we have shown the direct expenses of the road haul or highway terminal to terminal services to which I have added percentages of administrative expense, which was distributed, as I have said before, on a mileage basis. These expenses are then carried to a unit basis of cost per truck mile and a cost per hundred pounds.

Q. What do you show on pages 8 and 9?

A. On pages 8 and 9 we have been shown a detailed explanation of the terminal expenses at Racine and Chicago, respectively.

Q. How do you show these expenses?

A. The detailed direct expenses of the terminal as shown in the aggregate on pages 4 and 5.

Q. In other words, they are copied down to the word "Administration," they are the equal of the aggregate of those expenses?

A. Down to the item of "depreciation."

Q. All right. Now, to these expenses, what did you do?

A. To these expenses I first added a proportion of the administrative expenses allocated on the basis previously stated, and th employed by this company in the pick-up and delivery of freight.

260 Q. What are these three methods?

A. First, the use of highway trucks or units as a continuous part of the road haul movement. Secondly, by contract local draymen, which has been referred to in the exhibits as paid out cartage. Thirdly, by special equipment or so-called pickup and delivery units owned and operated by this carrier.

Q. How were the terminal costs in these terminals divided between these three classes of service?

A. All the direct costs in each service, such as wages of drivers, and so forth, were assigned directly to that service. The other costs were assigned between the three services on a tonnage or mileage basis, whichever was the most applicable to that particular service. For instance, the platform wages were assigned on a basis of tonnage and gasoline on the basis of truck miles.

Q. Do these two pages, 8 and 9, also show unit cost per hundred pounds and per truck mile?

A. Yes. As in the case of the road haul costs, unit costs are obtained by dividing the total cost in each service by the mileage operated and also by the hundredweight handled therein.

Q. Now, what is shown on page 13?

A. On page 13 we have shown an analysis of a forwarder concentration consignment moving on April 16, 1937. This consignment consisted of 49 individual less than carload or
261 less than truckload shipments of which the aggregate total weight was 10,940 pounds and, as indicated therein, it was destined over a wide area of the United States.

Q. Now, still referring to page 13, Mr. Girard, from the standpoint of the trucking company, how many deliveries were involved at Chicago in handling these 49 individual consignments?

A. In this particular instance, by referring to page 14 of that exhibit, you will find there were only two stops necessary for the delivery.

Q. That would be one at each end?

A. That is right.

Q. So that was really a point to point movement?

A. That is right, and you might note further there that this consignment or this truckload, as we call it, had 13 shipments in it and that we picked up an average of 6½ shipments per stop.

Q. Now, are the studies of the other companies similar?

A. Yes. The studies of all companies were made upon practically the same basis.

Q. The difference being in the distribution of the administrative costs on the basis of direct expense instead of mileage in the case of the other three companies?

A. That is correct.

Q. In determining the costs of handling forwarder ton-
262 nage, what elements did you use?

A. We used the average cost of providing pick-up or delivery at Chicago by the line haul truck; the average cost of a pick-up or delivery by all methods at the other terminals, and the average cost of a pick-up or delivery by all methods at the other terminal and the average cost per hundred pounds of

the terminal to terminal or highway line haul transportation.

Q. Then the average which you assume is typical is a pick-up or delivery at Chicago at the freight station of the forwarder by a road-haul truck?

A. That is correct.

Q. A typical pick-up or delivery at Racine by an average of the three methods there, assuming that the forwarder traffic distributes as the other traffic distributes there?

A. That is correct.

Q. And the average line haul cost of all traffic.

A. That is correct.

Q. How does the cost of handling forwarder traffic compare with the average costs of handling all traffic? I am dealing now with the averages shown on the summary page of the four companies and not merely with the Service Transport Company.

A. It is 2.12 cents less than the average cost.

Q. How does this come about?

A. The cost of forwarder pick-up-and-delivery service at
263 Chicago by highway units or trucks is 4.82 whereas the average cost of pick-up and delivery in Chicago by all means of vehicles or methods is 6.94. In each case the figures given are in cents per hundred pounds.

Q. In connection with this study, did you make any effort to ascertain the difference between the revenues received by the carriers from other traffic and those received from this traffic for which these proportional rates are designed to handle?

A. Yes. I refer to that part of this exhibit assigned to the Royal Transit Company, Inc., in the third section, of Milwaukee, Wisconsin, on page 13. You will observe that this carrier kept a tonnage record of the weight and revenue received from his local traffic, that is traffic originating or destined entirely on his route, the connecting line traffic, which is the traffic that was transferred to or from connecting line trucks; and steel traffic, which is the hauling of a specialized type of steel originating wholly on his line and destined to points wholly on his line. This shows that the average revenue received from local traffic handled by this company in each direction during three years of 1935 to 1937, both inclusive, was 30.6 cents. The average revenue received from connecting line traffic was 22.3 cents on the north-bound movement and 22.4 cents on the south-bound movement.

The average revenue from the forwarder traffic for the
264 operations of this company is 30 cents under the suspended tariff, which is about the same as the average revenue received from his local traffic. It will be observed it is over 35 percent greater than that received from other types of interchange or interline freight.

Q. You think that is typical of all the carriers operating in this territory, Mr. Girard, do you?

A. Yes; and I believe in instances of the Royal Transit Company, that their figures are more favorable than the figures of the ordinary carrier because they have specialized to some degree in certain types of interchange freight that other carriers do not engage in.

Q. You mean it is less favorable to the forwarder traffic than the other companies?

A. No; I mean by that, that their average revenue received from connecting line traffic, other than the forwarder traffic, results in a higher average than would be ordinarily true of some other carrier between Chicago and Milwaukee because of some specialized type of haul that the Royal Transit Company has.

Q. If I understand you correctly, then, the other trucks earn comparatively more from the forwarder traffic, compared with the other traffic, than this carrier did?

A. That is correct.

265 Q. What objection have the respondents in this case to charging their local rates for this traffic, Mr. Girard?

A. Of course, the respondents would be glad to get as high rates as they can on any traffic, but they are convinced that the traffic in this case will not bear rates any higher than those now charged and which will continue to be charged under the suspended tariff.

Q. Upon what do you base your statement that the traffic will not bear any higher rates?

A. Upon my knowledge of the through rates which are in effect and the cost of other carriers in providing the necessary service.

Q. In that connection, Mr. Girard, there has been some surprise expressed here about why the term "forwarder traffic" is used with respect to the traffic that is being handled or will be handled under these proposed tariffs. Is it true that that traffic which is called forwarder traffic is really a joint traffic which is obtained by the forwarder, is handled jointly between the forwarder and other carriers, including the truck lines in this case?

A. That is correct. It represents a joint through movement in which the overhead control is identical to any through movement, and I will compare, for instance, a through movement by two rail carriers.

266 Q. Well, what I was getting at is this: We have been talking about forwarder traffic. As a matter of fact, it is as much the traffic of these truck companies as forwarder traffic, isn't it?

A. Well, we do not differentiate between the fact it is a truck movement beyond Chicago or a forwarder. It is a part of our operation and we have accepted it as such because it does serve

that very definite purpose as being a part of that joint through movement.

Q. Then this so-called forwarder traffic, the forwarder is not used as a possessive noun, but as an adjective describing the traffic that belongs partly to your respondents, is that correct?

A. Most assuredly it is a part of our service.

Q. Well, I just wanted to get the English straightened out.

Exam. LATER. Yes.

(Discussion off the record.)

By Exam. LATER:

Q. Has the element of solicitation of this forwarder traffic been taken into consideration, and how does that cost of solicitation compare with the ordinary solicitation costs of truckers in getting their ordinary local or connecting line traffic?

A. Well, the forwarders maintain a very large solicitation force who actively solicit freight in all of the towns that are served by our carriers, and in the solicitation of this freight, our ear-

267 riers naturally are incorporated in the sales effort of the forwarder. I state that for this reason: That if one of the solicitors or salesmen of the forwarder solicits traffic at Racine, Wisconsin, he solicits that traffic on the basis of the service of the two carriers, namely, our truck carrier and his services beyond Chicago. That avoids our carriers having more solicitors than is necessary. And I think in each of the instances we have had up in our territory, the solicitation of freight by the forwarder is more on a cooperative basis between the local truckers serving that particular town than it is an individual effort on the part of the forwarder.

Q. Well, from your experience in gathering this information or from your general experience, do you know whether or not the solicitation charges on the so-called forwarder traffic is as great to the trucker as in the solicitation of local or connecting carrier business?

A. I would say there is no expense attached to the solicitation of freight by motor carriers with respect to the forwarder tonnage. The solicitation is more or less accomplished by the forwarder. It is only incidental to our carriers.

By Mr. TURNEY:

Q. Well, that is not true with your local traffic or your truck interline traffic, is it?

A. No.

Q. Then there is a substantial saving to the respondents in the solicitation of this traffic?

268 A. Yes; and the sales cost we show in all these analysis can be directly chargeable in the majority of the amounts

directly to the solicitation in our local business or interchange freight with the truck lines.

Q. But, you have put it here as a part of the administrative costs in the forwarder traffic?

A. Yes.

Exam. LATER. Well, now, that is what I wanted to get clear.

By Mr. TURNEY:

Q. Now, on that point, Mr. Girard, is it a fact or not that it would be out of the question for your principals, the respondents in this case, to solicit the traffic which is handled on these rates? By that I mean your companies do not have the representation at the points of origin or destination of this traffic which it would be necessary for them to maintain in order to get the business, do they?

A. That is correct. We do not have any such form of representation.

Q. And you could not get the business without it, could you?

A. No; and we could not establish such representation. It is unfeasible and impractical.

Q. And in addition to that, you could not convince the people located on your line, of the reliability or responsibility of one or two connecting lines beyond, for these long hauls of six or seven or eight or nine hundred or a thousand miles
269 or more?

A. That is correct.

Q. Now, getting back; why can't the through rates be increased over what they are now?

A. As I have already stated, the through rates upon which this traffic moves are the rail less than carload rates which were prescribed by the commission. I am quite confident that the shippers generally, with relatively few exceptions, would not pay higher rates than available by rail.

I might state right in that connection that it would be just about as difficult to raise our rates or attempt to secure business and use truck line connecting business on rates that are higher than the rail because practically all our rates in connection with truck hauls in an interchange movement are also on less than carload or less than truckload basis, identical with those rates prescribed by the Commission.

By Exam. LATER:

Q. For the rails?

A. For the rails; yes.

By Mr. TURNEY:

Q. Well, now, you have stated that in the event you attempted to assess the class rates on this traffic that the respondents

haul, the traffic would be lost. It will still move, won't it?

A. Yes. It has to move. There is no doubt about that, but it will move wholly by railroad and not by truck.

Q. Why?

A. As I have stated earlier, the traffic involved here is
270 primarily long haul less than carload shipments. It is out of the question in the presence of organization of truck carriers under interchange arrangements to handle any such traffic. In years to come this may be possible but the industry does not now have the stability, the transfer arrangements, the credit, the solicitation or sales forces, or the overhead organization which would be necessary to procure and service this traffic.

Q. Why do you think the forwarders would not continue to give you the traffic at your class rates?

A. They would not have it to give. As a matter of fact, some of the traffic which we formerly handled under these charges is no longer handled by the forwarders because of their own increased costs. Due to this fact, last year alone they canceled the rates upon a considerable amount of traffic which they formerly handled and were giving to our carriers from our so-called off-line-point territory.

Q. Mr. Girard, you have incorporated in your exhibit a statement which was furnished you, I understand, by some of the forwarding companies. It would be more proper for representatives of those companies to put it in.

What would be the effect of the cancellation of the suspended tariffs, in your judgment?

A. If the Commission should hold that the forwarders are subject to the Interstate Commerce Act as common carriers,
271 and we continued our concurrence in the through joint rates that are now published by the forwarders, the cancellation of the suspended tariffs would have no effect. But, should the Commission uphold the decision of Division 5 in the Acme case, and we are required to assess the local class rates, this traffic without a doubt would be diverted to the rail carriers from the respondent truck lines.

Q. What effect would that have upon the truck lines serving the distribution territory around Chicago, off line point territory?

A. For all the carriers operating into and out of Chicago alone, that would entail a loss of over one million dollars per year in gross revenues.

Q. How much to the carriers in the territory involved in these particular tariffs?

A. The sum of over $600,000.

Q. In both cases, that is the minimum?
A. Yes.
Q. That includes three forwarders and six or seven haulers?
A. Yes.

By Exam. LATER:

Q. Is that $600,000 the loss of revenue to the respondents in this proceeding?
A. That is correct, and that revenue would be based on the rates now in the suspended tariffs.

Mr. TURNEY. I think that statement requires a little
272 amplication to answer, Mr. Examiner.

Exam. LATER. All right.

Mr. TURNEY. That figure includes all truck lines that handle this traffic to the forwarders to the points covered by this tariff and some of them have not yet been made parties to the tariff, but have given instructions to be made parties, so the word "respondent" is not exactly accurate.

Exam. LATER. I see.

By Mr. TURNEY:

Q. Can these carriers stand any such loss?
A. No, sir. Regulation already has drastically reduced their normal local traffic. The loss of this business in addition would mean possibly the extinction of the majority of these carriers.

Exam. LATER. Should there not be an explanation of that statement that regulation has drastically reduced traffic? I think that ought to be clarified on the record.

By Mr. TURNEY:

Q. All right, Mr. Witness. You made it, go ahead.
A. I mean by that, Mr. Examiner, and I will go somewhat in detail to explain what I mean.

Prior to April 1, 1936, which was the date on which the motor carriers were required to file tariffs, and by the effects of the provisions of the Motor Carrier Act were required to assess such charges; prior to that time it was the practice of a carrier to
273 receive and secure revenue based upon purely a service angle.

For instance, one of our shippers at Racine would call a carrier this morning and say, "I must have a consignment in Chicago in one or two hours," or at some allotted time. That service was available and would be given. However, our carriers would tell the shipper it would cost him so much, based upon that particular service. In some cases it would be greatly in excess of rail rates or any other kind of rates. It would be based strictly upon the service rendered.

By Mr. QUIRK:

Q. And special arrangements.

A. And special arrangements.

However, this condition existed after April 1st, when our rates were established, and they applied on all. Regardless of what type of service he got, he paid just exactly the same as any other man, and we still continued to render this individual specialized service but at a greatly reduced cost over what it was previously.

When I say "drastically" I mean it has taken away certain advantages of flexibility that existed prior to April 1st.

I have experienced personally this reaction, that the number of empty truck miles now existing in the majority of motor truck operations throughout this territory is having a very serious problem. I need not go on to explain what the increase in empty motor truck miles is in any motor truck operation. It means simply added cost.

274 I believe it is generally understood that the motortruck industry today has reached a stage of financial disaster that has never existed in the history of the industry. That is my experience since 1920. It is not attributed, as some think, to the maintenance of higher rates, but is due solely to the loss of business because of certain conditions of regulation that will not permit us to retain the flexibility that we had prior to April 1, 1936.

In this particular instance, in connection with the suspended rates, this tonnage affords our carriers—and I am speaking particularly now for the so-called short haul carrier who serves distances of anything up to 150 or 200 miles—this carrier is not dependent and cannot depend alone on local tonnage that originates and is destined on its own route. It must, in order to serve the shippers on its route, have available service where in instances it can go into their plant, place a truck available to them, and take tonnage for all parts of the United States, disposing of it as to the routing instructions of the shipper.

Now, we have possibly two outlets in which to do that at the present time, that is, the connecting line truck service and the forwarder. There is no other available outlet. The forwarder has in the past ten or twelve years arranged for the handling of this tonnage and has fitted into our picture from its tonnage standpoint and a strictly service standpoint, in a

275 very splendid manner. In the past two years, or, I would say, since April 1, 1936, the desirability and practicability of transfer of freight by connecting line motor carriers is fast drawing to a point where it is precarious for our carriers to turn a shipment over to a connecting line trucker going beyond a distance of 200 or 300 miles.

Now, if the conditions continue to exist as they are, that outlet for the transfer of freight is going to represent a very negligible amount of our carriers' tonnage.

By Mr. TURNEY:

Q. Mr. Girard, is it also proper to state that in addition to causing a loss of traffic through a necessarily more inflexible method of operation, regulation has also substantially increased the administrative tariff costs which the carriers formerly had?

A. Now, when you speak of tariff costs, Mr. Turney——

Q. Well, strike out tariffs; just costs.

A. When you speak of that cost, it may appear on our books and records as tariff costs sometimes in the amount of $600 or $1,000. Looking at that figure alone, it would not establish what that cost really is. The carriers' time, traveling expenses incidental to the things that are necessary to put into those tariffs, greatly exceed that tariff cost, and I would say that in my opinion the overhead cost directly attributable to the establishment and maintenance tariffs under the provisions of Section 216
276 now represents a figure somewhere near 10 percent of our gross expenses.

Q. Well, now, Mr. Girard, on that point is it also true that because of this expense in tariffs, you are necessarily restricted in the degree to which you can interchange arrangements with other carriers, whereas before regulation, without the necessity for publication of joint rates you could take a shipment from a carrier with whom you had never done business before, on the spot, when he offered it?

A. That is correct. If you will permit me, I would like to go into that in detail.

At the present time in order for our carriers to transfer business to a connecting line truck carrier, that carrier must be by some arrangement a party to a joint through rate. And because of the conditions that I have previously explained exists, the restrictions as to the transfer of freight by motor carriers in our present tariffs is in such a chaotic condition that it is almost impractical to arrive at a safe conclusion as to what carrier can take the business after you turn it over to him.

Q. Well, now, on that point is this also true: That from the standpoint of the truck, by that I mean the respondents in this case, that even if the Commission should overrule Division 5 in the Acme case, even under those conditions the proportional tariff is a more economical and more efficient method than the present joint rate method?

277 A. It is the only feasible practical plan by which our rates in connection with this traffic can be published.

Q. It saves you tariff costs and saves you a considerable amount of accounting costs also, doesn't it?

A. It saves tremendously.

Q. And it will eliminate all bargaining and barter between the forwarders and any of the respondents.

A. It gives the desired condition that we want to see exist, and that is uniformity among all our carriers.

By Exam. LATER:

Q. I am going to ask this one question: That statement of yours that regulation reduces traffic; it reduced the possibility of getting increased revenue when a shipper asked for extraordinary services, rather than cutting down on the traffic itself. Is that not a fact?

A. That is a fact.

By Mr. TURNEY:

Q. Well, didn't it also reduce traffic because in many cases you were unwilling to provide the service at your regular rate?

A. That is correct.

Exam. LATER. Off the record.

(Discussion off the record.)

By Mr. TURNEY:

Q. Do you still continue to render this special service at the regular rates, or are there instances where the cost is prohibited and you cannot act as a contract carrier at a common carrier rate?

A. I don't understand that.

278 Q. Well, is it true that there are instances, not infrequently, frequent instances, in which your respondents cannot afford to, and refuse to accept special movements which will entail extra expense, because the published rate is not sufficient to take care of the cost?

A. Yes, sir. That is done every day.

Exam. LATER. That is what I wanted to bring out.

Mr. TURNEY. That is all I have.

By Mr. QUIRK:

Q. Mr. Girard, apropos this question about the loss that the motor carrier has suffered as a result of regulation, isn't it a fact that prior to April 1, 1936, practically all these motor carriers were also contract carriers, they had a very free, easy, and flexible method of doing business with the various shippers?

A. Yes. We were all contract carriers. That is all it was, special agreements and arrangements. We were rendering a common carrier service but, as far as the rates were concerned, they were all by special agreements or arrangements.

Mr. QUIRK. That is all.

Exam. LATER. Do you want to ask some questions, Mr. Born?

Mr. BORN. No; I do not care to ask any.

By Exam. LATER:

Q. Now, have you adequately explained the history of the publication of these suspended rates?

A. I do not think I have, but I will be glad to do so if
279 you desire it.

Q. I believe that it should be done. If I may take a minute, I will give you the exact dates.

Exam. LATER. Well, we will take a short recess.

(Whereupon a recess was taken.)

By Exam. LATER:

Q. Proceed, Mr. Girard.

A. In reply to your question, Mr. Examiner, during the month of October 1937, upon filing the present tariffs of record, which shows that it was issued in lieu of another tariff that was rejected by the Interstate Commerce Commission, we instructed Agent W. L. Meyers when submitting the present tariffs of record to the Commission that he write the following letter upon our instructions to the Commission. This was done and if permitted I would like to read this letter into the record.

Q. Well, I don't know until you get through, what it is.

A. (Reading.) "Enclosed find my tariff MF ICC B-142 issued in lieu of MF ICC——"

Mr. TURNEY. Just a minute, Mr. Girard, will it not be possible for you to have that letter reproduced and filed as an exhibit within the next four or five days?

A. It will be possible.

Mr. TURNEY. Can we file the copy as it is and then supply additional copies at a later date?

Exam. LATER. That will be all right.

280 By Exam. LATER:

Q. Do you know that that letter was mailed?

A. I do. I might say further, Mr. Examiner, that I was in constant and direct contact with the agent to see that our instructions in this particular regard were carried out.

Mr. TURNEY. I have here two copies, so it won't be necessary unless you insist on additional copies.

Exam. LATER. No. That will be marked Exhibit 17 and it may be received in evidence.

(Exhibit 17, Witness Girard, received in evidence.)

The WITNESS. I believe I should insert those tariff letters in there.

Exam. LATER. Yes, you have already explained that.

By Mr. TURNEY:

Q. That is the letter that accompanied that tariffs to the Commission?

A. Yes.

Exam. LATER. Let me ask this question:

By Exam. LATER:

Q. That is the suspended tariff, or tariffs?

A. Yes.

Q. All three of them?

A. Yes, I can say of my own knowledge that the letter accompanied tariffs No. 61-A, MF ICC B-138, and tariff MF ICC B-142, and I am confident that the same letter accompanied the other one.

281 Q. That is all right. There is one other question that I want to ask. In what respect does this forwarder traffic, so spoken of in this hearing, have on maintaining a balance of traffic for the carriers that you are appearing here for, and what would be the effect of the elimination of this tariff on that question of balance, and what advantage is balance?

A. Well, I will try to answer this.

Q. I have given you the whole thing so you can answer it as you see fit.

A. Yes, First, the loss of this tonnage to any carrier, whether he be a respondent in this case or not, who participates in this particular type of haul, would be a serious proposition.

I can best illustrate the effect of balance of a motor carrier by referring to that section of Exhibit 8 in connection with the Royal Transit Company, where you find on page 13 a very complete summary of all tonnage handled by that particular carrier in both directions for this company. You will find there that we have explained in detail just what the ratio of tonnage is in the directions serviced by this carrier. Also, we have shown just how this tonnage is made up, what proportion of the tonnage was less than truckload or less than carload, and what proportion was truckload. This is shown also to indicate what effect it would have on the average rates.

282 The balance of tonnage in a motor carrier operation in my opinion is one of the most important things that he has to deal with. The maintenance of a balance is generally the criterion as to whether the operation makes money or loses money. If a carrier has wonderful tonnage moving in one direction and

very little tonnage moving in the other direction, he is in a very precarious position.

By Mr. QUIRK:

Q. Mr. Girard, one of the questions the Examiner asked you was whether this forwarder traffic enabled these particular carriers to bring about a balance of tonnage in operation.

A. I will get to that. Going on with my explanation there, I will explain that in the case of a carrier with considerable off balance, the rates in one direction would have to be so high to meet the operating costs that he would jeopardize the movement on which he had a great deal of tonnage. Now, the forwarder tonnage or freight that is handled in joint through movements with the forwarders has enabled our carriers to in some degree stabilize the movement of their tonnage and with the loss of this tonnage it would affect these operations in more than one way, and primarily in the cost of operation on the tonnage that would remain. The loads would be light, the average costs per hundred pounds would naturally go up.

By Mr. TURNEY:

283 Q. Well, now, Mr. Girard, to shorten this: Getting away for the moment, from the question of economics of balanced loads, isn't it a fact that in the case of all these carriers the balance of their tonnage, excluding the forwarder tonnage, is outbound from Chicago and that the balance of the forwarder tonnage is decidedly inbound into Chicago, with the result that the addition of the forwarder tonnage tends to balance their loads?

A. That is correct. The forwarder tonnage in the majority of cases moves from the points outside of Chicago into Chicago and it is natural that our tonnage out of Chicago in practically all cases is the peak tonnage.

Q. And if you did not have the forwarder tonnage you would be running empty mileage from these outlying points in Chicago in order to handle this traffic outbound to those points from Chicago, isn't that true?

A. That is correct, and our present local rates would be insufficient to cover that particular operation, necessitating increases.

Mr. TURNEY. That is the point your Honor had in mind, I think.

Exam. LATER. That is what I had in mind. I realize the great importance of balance, and I want to know what the affect of this traffic was on that point.

By Mr. TURNEY:

Q. As a matter of fact, there isn't a great deal of L. C. L.
284 tonnage distributed from Racine into Chicago proper, but

there is a lot of L. C. L. local tonnage moving from Chicago to Racine, whereas with the forwarder traffic there is more tonnage moved by the forwarders out of Racine than into Racine.

A. That is correct. The two movements are in reverse direction.

By Mr. QUIRK:

Q. Did you hear the testimony of Mr. Mogensen, President of the Service Transport Company?

A. Yes.

Q. Did you hear him make the statement that between 40 percent and 50 percent of his tonnage consisted of the forwarder traffic?

Exam. LATER. 50 percent and 60 percent.

By Mr. QUIRK:

Q. That is the haul.

A. I did hear him say that.

Q. Does it necessarily follow that that proportion of any trucker's traffic tends to bring about a balanced movement?

A. There is no doubt about that.

By Exam. LATER:

Q. There is one other question, and that is the elimination of delay or expedition of service by reason of the use of trucks rather than rails out of these concentration points which are set up on this exhibit that you have put in evidence here. To explain better, is there an elimination of delay and an expedition of service to shippers by reason of the fact that the trucks pick it up
285 at these terminals and distribute it rather than have the rails take it to these points?

A. Yes, there is, and I can illustrate it best by citing this particular condition: We will take the Milwaukee division. The trucks operating between Chicago and Milwaukee number approximately 400 units. A shipper can call one of our truckers at nine o'clock in the morning and have his freight into Chicago delivered to the forwarder by noon that day. He can likewise deliver it to the trucker at one o'clock and have it here in Chicago by three or four o'clock. That type of service is not available by any railroad that I know of. In fact, the railroads between Chicago and Milwaukee render very little less than carload service. The amount of less than carload traffic that is handled is negligible because of the existence of the service by the motor carriers that is maintained at those points. That is true throughout the entire Chicago district. Services from an hour up to a maximum of four hours is available to any shipper. They can make any car of the forwarder at any time going in any direction that the shipper desires.

Q. Now, I believe your qualifications show that you have been both with the rails and the big shippers. Tell us where the delay actually occurs in the handling of rail traffic that is overcome by the use of trucks?

A. I would say in all instances, regardless of territory,
286 that delay is occasioned by terminal handling. I am speaking of the Chicago district where the handling of freight by rail carriers is an intricate, complicated, and delayed proposition, and I would safely say it would be very unusual to get a shipment through the Chicago gateway, that is less than carload shipment, through the Chicago gateway in any transfer in less than 24 hours.

Exam. LATER. That is all.

(Witness excused.)

Mr. TURNEY. That is all.

Mr. QUIRK. It might be interesting to state for the record that I personally made inquiry concerning these tariffs at the time they were filed and when they were suspended, to ascertain whether there had been any protest filed by anybody against the tariffs, and I was told by those in charge that there had not been any.

Exam. LATER. Off the record.

(Discussion off the record.)

W. J. H. MCENTEE was sworn and testified as follows:

Direct examination by Mr. TURNEY:

Q. Your name is what?

A. W. J. H. McEntee.

Q. You reside in New York?

A. In New York.

287 Q. Or, rather, in Brooklyn?

A. In Brooklyn, New York.

Q. What is your business?

A. I am vice president and treasurer of Acme Fast Freight and Affiliated Companies.

Q. Do you have charge of their rates and traffic?

A. I do.

Q. Mr. McEntee, do you agree with Mr. Girard's statements that the traffic involved in this proceeding, which we have been calling forwarder traffic, is in fact a joint rail and truck movement which is handled through the instrumentality of the forwarder?

A. Yes, sir.

Q. How long have you been connected with the Acme Fast Freight?

A. Since 1930.

Q. That is a forwarding company, I believe?

A. That is.

Q. Can you tell how the forwarding companies formerly operated before the development of truck transportation?

A. Prior to the development of truck transportation the forwarders were only engaged in the transportation of traffic from one on-line terminal to another on-line terminal entirely by and through railroad operation.

288 Q. Will you explain just as briefly as you can what you mean by on-line points and what you mean by off-line points?

A. On-line points are points where freight normally moving in quantities is sufficiently large enough in quantity to justify making a station and a point from which cars are normally made up.

Q. Well, a concentration point is a place from which freight is shipped and a breakbulk point is a place where traffic is received?

A. Yes.

Q. What is an off-line point?

A. It is a point within a freight territory surrounding each of these concentration or distributing points from which freight is sent into the concentration or distributing points.

Q. Well, the difference is that two on-line points, the forwarder handles the shipments on carload quantities and to or from off-line points it is handled in an L. C. L. quantity?

A. Generally, that is true.

Q. Now, prior to the truck, I believe you stated you did not handle traffic to or from the off-line points?

A. We had no medium by which to do it.

Q. Why?

A. There was no available mechanical means of transportation.

Q. Why couldn't you use the rail L. C. L. service?

A. The combination of locals would cost more than the revenue you would receive.

289 Q. Was it also true that the service was such that it would be of no advantage to you?

A. That is correct, too, Mr. Turney.

Q. Now, how long have you been engaged in servicing the off-line points?

A. Well, as far as any determination can be made on that, I should say it began shortly after the war when the use of the truck as a medium of transportation began to come into play.

Q. And it extended as the truck transportation extended, is that true?

A. It developed along with the truck transportation.

Q. So at this time the three principal forwarders serve practically all points in the United States as off-line points or as on-line points?

A. We do; yes, sir.

Q. Now, have you made any investigation, not only with Acme, but the three principal forwarders, to determine approximately the percentage of the business that moves to or from the off-line points?

A. At various times we have made analyses of the approximate percentage of off-line originated freight and off-line terminated freight.

Q. What does that aggregate?

A. The aggregate of the two will be between 55 percent and 60 percent of the entire forwarder business.

290 Q. In other words, between 55 percent and 60 percent of all your shipments either originate or terminate at an off-line point?

A. Correct, and they receive a truck distribution or a truck concentrating service.

Q. Now, the three forwarders aggregate revenue amounting to how much, approximately?

A. The gross aggregate revenue of the three large forwarders would be in excess of a hundred million dollars.

Q. And 60 percent of that would represent the amount handled by truck or about 60 million dollars?

A. If the proportion of the revenue is in proportion to the tonnage, yes.

By Exam. LATER:

Q. You make that on a tonnage prorate?

A. Yes.

By Mr. TURNEY:

Q. That is the revenue that would be received by the forwarders?

A. Yes, for the complete transportation, including rail haul, and between the concentration points as well as the off-line points at either end of the line or both ends of the line.

Q. Yes. Now, would it be feasible for the forwarders to continue the handling of concentration or distribution of freight from off-line points or to off-line points if they charged local truck rates to and from the concentration or distribution points?

291 A. In my opinion we could not.

Q. Have you from time to time found it necessary to discontinue serving off-line points even at rates lower than the local rates to and from the concentration points?

A. We have.

Q. Now, have these three forwarders in this case made a test to determine just exactly what the costs are, the revenues and costs are in handling the particular traffic that originates and terminates, and would be handled under the three tariffs under suspension?

A. We have.

Q. Is that shown in Mr. Girard's Exhibit No. 9?

Exam. LATER: I will tell you, as far as I am concerned, I was going to ask about that very thing. The last one I have marked here is Exhibit 8, and you have two more numbers, haven't you?

Mr. TURNEY: One more.

Exam. LATER: 8 and 9.

The WITNESS: Here they are right here (indicating).

Exam. LATER: Oh, all right. That straightens that out.

By Mr. TURNEY:

Q. Now, will you state just how you made that study?

A. We made the complete test and analysis and summation of all shipments arriving at or forwarded from each of the respected territories covered by the three suspended tariffs.

292 Q. Was it necessary to examine every single L. C. L. freight bill and also the truck way bill and the railroad—call it way bill for any better name, involving the shipment?

A. We did, and it was necessary.

Q. Will you explain just what this exhibit shows?

A. This exhibit shows an analysis in terms of hundred weight of the through charges and the costs on the traffic originating or terminating with all the three separate territories on February 11, 1938.

Q. In other words, you analyzed the revenues and costs of every shipment handled by the three forwarders to or from this territory on that date.

A. Every shipment was individually handled, examined, and the exact and actual costs disbursed were recorded.

By Exam. LATER:

Q. That is through every one of the concentration points involved in that map that Mr. Girard put in yesterday?

A. Involved from any point as an origin point within the three territories, that is, the Indiana territory, the Chicago-Metropolitan district, and the Chicago-Wisconsin territory.

Q. That is right.

A. For every shipment arriving at Chicago as the gateway, destined for handling and distribution from Chicago to each one of the points in the three separate territories.

Q. Would that include your consolidation points in Indiana?

293 A. It would. As far as Indiana was concerned, Mr. Examiner, the points were Indianapolis, Evansville, Muncie, Ft. Wayne, and South Bend.

By Mr. TURNEY:

Q. Now, what was the average revenue collected from the shipper on all of the shipments of the three forwarders from or to the three territories?

A. The average revenue received by all three forwarders on that entire traffic of the three territories concerned was $1.5537.

Q. That is weighted average on all three?

A. Exact average.

Q. What do you mean by the statement, "average paid other transport companies"?

A. That is all the other elements of direct transportation other than the gathering or distributing service performed under these tariffs.

Q. By the respondents?

A. By the respondents.

Q. That includes the amount which you paid railroad companies, the amount which you paid other trucking companies at the other end of the line either for collection, delivery, or for line haul transportation?

A. Yes.

Q. What does the third line show?

294 A. It shows the average amount per one hundredweight paid to the respondents for the services of gathering or distributing out of the gateways into or from the three respective territories.

Q. Then the fourth line, the forwarder's operating costs, for what services is that cost figured?

A. On the entire services for the entire year 1937 of all three companies.

Q. Well, now, what services are embraced in that?

A. All services performed by the forwarding company beginning with the expense of solicitation, expense of maintaining stations——

Q. Loading and unloading?

A. Loading and unloading, for the receiving of freight and delivering of freight.

Q. Transferring freight?

A. Transferring freight.

Q. Billing?

A. Billing.

Q. Loss and damage?

A. Loss and damage and insurance, claims——

Q. Tariffs?
A. Tariffs.
Q. Lawyers?
A. Lawyers as well. That is no small element at times.
Q. Now, all administrative, station, and tariff expense?
295 A. Every dollar of expense other than direct transportation cost.
Q. How did you prorate those expenses to this traffic?
A. The entire ratio of all such expenses to the gross revenue collected by each company was stated in a formula of percentage.
Q. In other words, it is your operating ratio?
A. Operating ratio.
Q. Do you think that basis of proportionate is the correct way?
A. I know of no other fair method of doing it.
Q. Now, on that basis you then show the average cost per one hundred pounds in this particular territory?
A. And on each particular company applied to this particular traffic in each particular territory on that day.
Q. What were the total transportation costs?
A. The total transportation costs average per hundredweight for the traffic involved $1.5433.
Q. How much did that leave for your profit?
A. That leaves a profit of $.0104 per hundred pounds.
Q. Does that profit represent the amount which you have left to pay any increase in the present charges of respondent?
A. That is all we have left to pay any increase.
Q. And if those charges should be increased, what will happen?
296 A. We will be compelled to forego handling traffic by reason of the prohibitive costs.
Q. Now, in some of these territories are you now handling it at an over-all loss?
A. This particular type of traffic is being handled at an over-all loss.
Q. But, on the whole, it is slightly profitable?
A. On the whole, taking the three territories together, involved in the three suspended tariffs, the results show a slight margin of profit.
Q. Does the fact that you do have this traffic tend slightly to reduce your other costs through enabling you to get better and more selective loading of cars?
A. That is correct, and enables us to form a more complete and all-embracing service. I should add, Mr. Examiner, there is no element of profit in the fourth item appearing there as

Forwarders' operating costs. There isn't a single dollar of profit put in. Those are the actual dollars of expense only.

Exam. LATER. We will take a recess for a few minutes.

(Whereupon a recess was taken.)

By Mr. TURNEY:

Q. Mr. McEntee, in computing the ratio of off-line tonnage to the total, will you explain what you included?

A. Mr. Turney, let's get that a little bit clearer. What I said was that tests which we had made revealed that out of
297 the total tonnage originated by the freight forwarders, approximately 27 percent of such tonnage received at the origin point was hauled into the gathering point.

At the other end of the line and on that same tonnage, not using it a second time but the same originating tonnage, the percentage of traffic destined to points beyond the breakbulk point which, therefore, received a distributive haul by truck, was in excess of 30 percent. Therefore, of the total tonnage originated approximately 55 to 57 percent received a gathering or distributive service.

Q. Or both?

A. Or both.

By Exam. LATER:

Q. That was not necessarily off-line.

A. That does necessarily mean that is the percentage of our off-line business nor does it mean the percentage destined off-line.

By Mr. TURNEY:

Q. But, it does represent the tonnage which you would lose if you did not have an off-line service?

A. It represents that portion of the tonnage that receives either kind of a haul.

Q. Well, it does represent the amount of tonnage which would be lost if you did not handle traffic to or from line points?

A. That is correct.

Mr. TURNEY. Now, Mr. Examiner, while the witness is on the stand, I find that in Exhibit No. 5, there were
298 omitted three tariffs which I think I would like to have permission to refer to. I would like permission to refer to their ICC number and describe generally their conterts.

Exam. LATER. Very well.

Mr. TURNEY. Sedgman's No. 37, Item 1560, page 218.

The WITNESS. What is your ICC reference, Mr. Turney?

Mr. TURNEY. I will have to get that. I have just the agent's number, and I must have the ICC number, but I will supply that a little later.

Exam. LATER. All right.

Mr. TURNEY. The New York, New Haven and Hartford Railroad Company ICC tariff No. F–2678, and Agent Curlith's trunk-line tariff, No. ICC A–527.

Now, these tariffs, if I may say, provide for movement of articles at class and commodity rates moving in L. C. L. service into North Atlantic ports and then the consolidation into movements via coastwise steamers into carload lots. Now, these tariffs name proportional rates to the ports.

By Mr. TURNEY:

Q. In other words, I will ask the witness if that is identical with the situation proposed here?

A. It is.

Q. And it applies on practically all classes and commodities?

A. It does. May I correct one thing, Mr. Turney?

Q. Two, if two are wrong.

A. You said class and commodity rates.

299 Q. Yes.

A. The traffic does not move into the port on class or commodity rates but, instead, on those proportional rates which differ from both the class and commodity rates.

Q. Yes; but what I had in mind was that Sedgman's tariff provides for the mixture of these L. C. L. articles that move into the port L. C. L., to move out at carload class or commodity rate for the remainder of the haul?

A. That is right.

Exam. LATER. By the boat line

Mr. TURNEY: Yes.

By Mr. TURNEY:

Q. And also Sedgman's tariff includes the haul from the port in Texas or Gulf ports.

A. Yes.

By Exam. LATER:

Q. In other words, it is rail-water-rail?

A. Yes.

By Mr. TURNEY:

Q. It is a clear case where you have a proportional rate on the L. C. L. movement of traffic to be consolidated and moved in carload consignments?

A. Yes.

Exam. LATER. By the way, can you give the reference to the particular item you are referring to, if there is a rule in there that governs?

Mr. TURNEY. Well, the consolidation rule, I gave the item number. That is Sedgman's tariff.

300 Exam. LATER. All right.

By Mr. TURNEY:

Q. Mr. McEntee, is it true in respect to this particular territories that it will be necessary for the forwarders to cancel their service and their rates to or from these off-line points, at least to a very extended, if not complete degree, in the event the present charges or charges in excess of those in the suspended tariffs are assessed for the service between Chicago and such points?

A. It will, Mr. Turney. That also applies to the traffic clearing through the five gateways in Indiana.

Q. Mr. McEntee, do you recall whether or not it is a fact that prior to the time you were able to coordinate the rail and truck in the manner which you have described, that there were only five points in the entire State of Indiana which were served by forwarders?

A. Yes. Further than that, I will say that before we were able to provide coordinated rail and truck service there was only one point in the State of Indiana and that was Indianapolis. And not all forwarders were able to meet the situation there. It was only the larger forwarder who could give service into Indianapolis and from Indianapolis.

Q. The shippers at the smaller towns, then, did not have the advantage of that service?

A. They did not.

Mr. TURNEY. That is all.

301 Exam. LATER. Do you have any questions, Mr. Quirk?

Mr. QUIRK. No.

Exam. LATER. Do you have any questions, Mr. Born?

Mr. BORN. No questions.

By Exam. LATER:

Q. Now, as to the average paid respondents in case there is considerable operation; for instance, in Indiana, in the Indiana territory, a little over 20 cents per hundred pounds, and 32 cents for the Wisconsin territory?

A. That is correct.

Q. Do you have information at the present time that would indicate the average length of haul by motor carrier for which these rates were paid?

A. I have no record of the average length, but I can tell you that the length of haul in the Wisconsin territory is far greater per hundred pounds over the entire traffic than in Indiana.

You must remember that in Indiana there are five gateways so set up, and the rates are established to the nearest gateway from which the particular forwarder operates. There are five points in the State of Indiana, and necessarily the haul to any point there is shorter than the comparatively longer haul along the shores of Michigan.

Q. I was wondering whether the level of rates into Wisconsin was actually higher than in these other territories, or whether there was the same relative level of rates for this pick-up or distribution of service out of your consolidating points.

302 A. If the Examiner please, when these rates were established, as Mr. Girard has explained, no attempt was made to change the level of the existing rates paid under concurrences and under joint rate procedure.

Q. Yes.

A. Whatever that level was, it was maintained so that the affect of publishing the tariff was merely to change the form without changing any of the rate structure. Whether or not that particular level then in effect in Wisconsin was expressed in the percentage of the first-class rate higher than the level in Indiana, I am not prepared to say. I have a feeling that it was possibly at a slightly higher percentage, but not very much.

Q. That is in Indiana out of Wisconsin, or the reverse?

A. The reverse. Wisconsin being higher than Indiana. But, you are dealing with a totally different type of class-rate structure.

Q. There was one other question, and that is, are you in possession of any information that would show the total amount paid to motor carriers for this distribution service in the territory covered by the suspended tariffs during the year 1937?

A. Those figures were introduced by Mr. Girard as an exhibit.

Q. Oh, as an exhibit for the whole territory?

303 A. We have the three territories and that exhibit was introduced for the three territories involved.

Q. Oh, well, that is all right, then.

Mr. QUIRK. Exhibit 4, Mr. Examiner.

Exam. LATER. That is all.

Mr. TURNEY. The I. C. C. number of Sedgman's tariff No. 37 is ICC 237, July 22, 1937.

Exam. LATER. That is effective that date?

Mr. TURNEY. Yes, sir.

The WITNESS. That was a ratio, Mr. Turney.

By Mr. TURNEY:

Q. Oh, yes, Mr. McEntee, these tariffs to which I have referred have been in effect for many years, have they?

A. Yes. We have been handling traffic on them for a number of years.

Exam. LATER. Then the tariff references you gave are reissued tariffs?

Mr. TURNEY. Yes, sir.

Exam. LATER. Are there any further questions of this witness?

(No response.)

Exam. LATER. You are excused, Mr. Witness.

(Witness excused.)

O. B. HIGGINS was sworn and testified as follows:

304 Direct examination by Mr. TURNEY:

Q. Mr. Higgins, will you state your name?

A. O. B. Higgins.

Q. Mr. Higgins, what position do you hold?

A. I am vice president of Traffic, National Carloading Corporation, 19 Rector Street, New York City.

Q. Mr. Higgins, you participated with the other two forwarding companies, the Universal and Acme Companies, in the preparation of the figures which have been shown here in the several exhibits and which have been introduced in evidence by Mr. Girard?

A. I did.

Q. Insofar as your company is concerned, the figures there are correct, are they?

A. To the best of my knowledge and belief.

Q. Do you agree with Mr. McEntee that the traffic involved in this proceeding will not bear any higher rates than the rates in the suspended tariffs?

A. Generally speaking; yes.

Q. And that if those rates should be increased it will be necessary for the forwarding companies, likely if not entirely, to retire from serving the off-line points embraced within tariffs.

A. That is correct.

Q. And the off-line business as a whole constitutes a

305 large part of your total business of your company, does it?

A. That is right.

Q. And if that business is lost, it would materially reduce the amount of truck transportation used by your companies?

A. That is true.

Q. And it would considerably reduce the volume of your business?

A. Correct.

Mr. TURNEY: That is all.

EXAM. LATER: You are excused.

(Witness excused.)

M. FORGASH was sworn and testified as follows:

Direct examination by Mr. TURNEY:

Q. What is your name?

A. M. Forgash.

Q. What is your position with the Universal Carloading Company?

A. I am traffic assistant to the president of the United States Freight Company and affiliated companies, in which is included the Universal Carloading and Distributing Company. I am also a director of the United States Freight Company.

Q. You have charge of the traffic of that company?

A. In a supervisory capacity, that is correct.

Q. The Universal, I believe, is the largest and oldest of
306 the forwarding companies to the best of your knowledge?

A. That is correct.

Q. Mr. Forgash, you have heard the testimony of Mr. McEntee and Mr. Higgins. In order to save time, is what those gentlemen said with respect to their companies also true with respect to your company?

A. That is correct.

Q. And if I asked you the same questions your answers would be the same, would they?

A. Correct.

Q. The statistics that were used in the exhibits of Mr. Girard and Mr. McEntee, so far as the Universal Company is concerned, were taken from your actual records and are correct?

A. That is correct.

Mr. TURNEY: That is all.

EXAM. LATER: That is all, Mr. Witness.

(Witness excused.)

E. J. WHITEHEAD was sworn and testified as follows:

Direct examination by Mr. BORN:

Q. You may state your name and place of residence.

A. E. J. Whitehead, Indianapolis, Indiana.

Q. You are associated with what company?

307 A. Motor Express, Inc., of Indiana.

Q. In that business are they engaged in the general transportation of freight?

A. By motor vehicle.

Q. Operating between what points?

A. Indianapolis and Terre Haute.

Q. Operating as a common carrier?

A. Yes.

Q. How long have you been operating between Indianapolis and Terre Haute, Indiana?

A. For approximately a period of fourteen months.

Q. In what capacity are you associated with this company?

A. As general manager at Indianapolis.

Q. Do you know whether or not Motor Express, Inc., of Indiana is a participating carrier in the tariff under suspension?

A. Yes.

Q. Have you made a study of the tonnage handled by your company?

A. Yes.

Q. Is that based on the tonnage handled between Terre Haute, Indiana, and Indianapolis, Indiana?

A. It is.

Q. For what period did you make that study?

A. We made the study for the period between February 1st and the 14th, 1938.

308 Q. Will you now refer to your Exhibit 18 and make such remarks as you believe necessary?

Exam. LATER. Let the record show that Exhibit 18 is received in evidence.

(Exhibit 18, Witness Whitehead received in evidence.)

The WITNESS. Our company followed the policy of not revealing the actual tonnage or revenue figures. However, we have reduced it to a percentage on local tonnage, on interline tonnage, and on tonnage from consolidators. This shows that 28 percent of our business from consolidators is from consolidators which produce 29.8 percent of the revenue and that is very important to our company.

You will also notice that the average revenue from the consolidators is 7 cents per hundred pounds more than that which we received from interline freight companies.

Q. And these figures as shown on your Exhibit 18 under the heading of "Average rate" are in cents per one hundred pounds?

A. In cents per one hundred pounds; yes.

Q. Do I understand correctly from this exhibit that you received more money per one hundred pounds for handling freight from carloading companies or forwarders than you did from your local traffic?

A. Yes; that is true.

Q. Is it also correct in showing that you received 7 cents per one hundred pounds more from them than you received
309 from your interline business?

A. That is very true. We have also shown class rates from Terre Haute, Indiana, to Indianapolis, Terre Haute to Cleveland, Terre Haute to Dayton, and Terre Haute to Detroit. In the last three columns we show the percentage of the rate which we received on hauls to Cleveland, Dayton, and Detroit, from Terre Haute.

Q. Have you made a study of your interline business to see what it averages in the way of class?

A. It averages less than our fourth class L. C. L. from Terre Haute to Indianapolis. Our local and our consolidating or carloading company tonnage and revenue is better than fourth class.

Q. Now, Mr. Whitehead, do you consider the business turned to you by the forwarding companies an important element in your business?

A. Yes; it is, and particularly so on this Indianapolis-Terre Haute haul. This is a new territory which we have just opened up and without the carloading tonnage and revenue, we would be forced to curtail our service.

Q. Would you be able to give a daily service between Terre Haute and Indianapolis to the public, were it not for this forwarding business?

A. Under the present conditions we would not be able to. We would be forced to hold our tonnage until we could get a
310 profitable operation out of it, which would probably mean second and third deliveries into Terre Haute.

Q. Now, on shipments delivered to carloading companies at Indianapolis or received from carloading companies at Indianapolis, what type of equipment is used in making this pick-up or delivery?

A. Road haul equipment exclusively.

Q. Used exclusively?

A. Yes.

Q. Do you use road haul equipment in making deliveries of your local freight within the City of Indianapolis?

A. No; we do not.

Q. How is that handled?

A. We handle that either by our own pick-up and delivery trucks or through cartage companies. The average cost of cartage company delivery is 6 cents per hundredweight with an 18-cent minimum on all shipments of 1,800 pounds or less.

Q. Have you any remarks to make as to whether or not this tonnage received from the forwarders balances your loads between Terre Haute and Indianapolis?

A. It helps in the balancing of loads. The percentage of freight moving between Terre Haute and Indianapolis from consolidators is greater than that moving to them from Terre Haute.

Q. Are your trucks running at this time loaded to capacity?

311 A. Practically.

Mr. BORN. That is all.

Mr. TURNEY. I have no questions.

By Exam. LATER:

Q. Just one question from the standpoint of balance of traffic; what effect does this carloader have on your traffic?

A. It enables it to have a balanced movement. The freight we pick up in Terre Haute and Indianapolis from the carloaders more or less balances our operation.

Q. In other words, you get a little more at Indianapolis for distribution in Terre Haute than you do at Terre Haute to take to the consolidator at Indianapolis?

A. That is correct.

Exam. LATER. If there are no more questions, the witness is excused.

(Witness excused.)

Exam. LATER. We will now adjourn until 1:30 this afternoon.

(Whereupon, at 12:20 P. M., adjourned until 1:30 P. M.)

AFTERNOON SESSION, 1:30 P. M.

Exam. LATER. Are you ready to proceed, Mr. Born?

Mr. BORN. Yes.

CHARLES R. WHISTLER was sworn and testified as follows:

312 Direct examination by Mr. BORN:

Q. What is your name?

A. Charles R. Whistler.

Q. Where do you reside?

A. Lafayette, Indiana.

Q. You are associated with what company?

A. Lafayette-Indianapolis Transit Company, Ind.

Q. What business are they engaged in?

A. In the transportation of freight by motor vehicle.

Q. Between what points do you operate, Mr. Whistler?

A. Lafayette and Indianapolis.

Q. Those are both within the State of Indiana?

A. That is right.

Q. How long have you been in the transportation business?

A. We were incorporated in 1929.
Q. In what capacity are you associated with the company?
A. Vice President and General Manager.
Q. How long have you had that position, Mr. Whistler?
A. Since the incorporation of the company.
Q. That was in 1929?
A. 1929, that's right.
Q. Have you been operating between Lafayette, Indiana, and Indianapolis, Indiana, since 1929?
A. Yes, sir.
Q. Operating as a common carrier?
A. Yes, sir.

Q. Are you a participating carrier in the tariff under
313 suspension?

A. Yes, sir.

Q. Have you made a study of the tonnage that was handled by your company during the year 1937?
A. Yes, sir.
Q. Will you now refer to your Exhibit 19, consisting of one page?

Exam. LATER. Let the record show that Exhibit 19 is received in evidence, if there is no objection.

(Exhibit 19, Witness Whistler, received in evidence.)

By Mr. BORN:

Q. Will you proceed, Mr. Whistler?
A. My exhibit 19 portrays the total number of pounds that were handled between Lafayette and Indianapolis over our line for the year 1937. Local tonnage amounted to 8,640,311 pounds. Interline tonnage amounted to 6,297,736 pounds. Tonnage received from consolidators, which in this instance is from freight forwarders, amounted to 2,195,066 pounds.

I have also shown on this exhibit the total amount of revenue received for each type of service as well as the average rate that our line was paid for the different types of service.

It is to be noted that on the tonnage from consolidators or freight forwarders, our average revenue was 29.3 cents, netting to
314 us 6.5 cents more per 100 pounds than we actually received in the handling of interline business. It might be well for me at this time to state that the average rates as shown on this exhibit are in cents per one hundred pounds.

This exhibit further shows that on our local tonnage the average rate per one hundred pounds is slightly in excess of third class and the average rate received from the freight forwarder is be-

tween third and fourth class, whereas the average rate received from interline business is less than our local fourth-class rate.

I have made a study of the interline business as handled over our line and it averages very closely to third class and I have set forth on this exhibit, certain examples of division of the average rate that we receive for the portion of the haul from Lafayette to Indianapolis, when shipments are destined to Cleveland, Ohio; Detroit, Michigan; St. Louis, Missouri; and Toledo, Ohio.

Q. Mr. Whistler, in the conduct of your business do you keep accurate book records covering your entire operation?

A. We have accurate records covering our operation and have had such records for approximately three years and our books are audited at regular intervals by a certified public accountant and at my instance a complete audit was made for the year 1937.

I have prepared certain exhibits taken from this audit demonstrating that under the rate proposed, the handling of busi-
315 ness from consolidators because of its volume and ease of handling is profitable and is a needed part of our business in order that we may stay in existence.

In making this audit for the year 1937, I have taken perhaps the worst year that our company has encountered since the date of its incorporation. During the latter part of the year in the so-called recession, practically all the plants in Lafayette have been closed, and it is frankly my opinion that the figures which will be developed later could not be considered as a normal base but rather will show much higher than a normal situation.

As an example, in 1936 we did approximately eight million pounds more business without any additional expense as to dock help and office salaries and with this added business the distribution of administrative and other expense can be more evenly divided.

Q. Now, at this point, Mr. Whistler, you mentioned that you did eight million pounds more business in 1936 than in 1937 without any additional dock expense or office expense. Did you handle that eight million pounds more freight with the same revenue equipment that you have at the present time?

A. Yes; practically the same.

Q. And are you operating the same number of pieces of equipment in the year 1937 as you did in the year 1936?

A. Yes.

Q. So that without any change in overhead cost, you
316 handled twenty-five million pounds of freight in 1936 as

against seventeen million pounds in 1937, is that correct?

A. That is about correct.

Q. Now, will you take up your next exhibit, which is exhibit 20?

I ask that that exhibit be received in evidence, Mr. Commissioner.

Exam. LATER. Let the record show it is received in evidence.

(Exhibit 20, Witness Whistler, received in evidence.)

By Mr. BORN:

Q. That exhibit consists of seven pages, does it?

A. Yes. The first page would be a schedule of operating expenses for the year 1937.

Q. That is correct.

A. It is a schedule of operating expenses, which I believe is self explanatory, and shows for the year 1937 our total operating expense was $43,631.86, against a revenue as taken from my previous exhibit of $50,598.11.

Q. Now, will you refer to page 3 of this exhibit 20?

A. This is a continuation. This exhibit sets forth a schedule of terminal to terminal operating expenses taken from the book records of our company. These figures represent the total charge as against road haul equipment, and, therefore,
317 include expenses of pick-up or delivery either at Lafayette or Indianapolis when that service is performed by a road haul truck.

Q. Now, Mr. Whistler, in making pick-up or delivery to the freigh forward in Indianapolis, how is that handled by your company?

A. That is handled by our road ck haul.

Q. Is that so handled in every instances?

A. Yes, sir.

Q. Will you now turn to page 4 of your exhibit No. 20?

A. This page sets out certain direct operating expenses as chargeable against the Indianapolis and Lafayette terminals. The figure as shown for cartage paid out at Indianapolis of $7,910.32 is not a correct charge as against the Indianapolis terminal and the correct figure should be $5,804, but for the purpose of this study, the item as taken from the books is allowed to remain and the balance has been charged to general operation. That is the difference between your $5,000 and $7,000.

Q. Will you now refer to sheet 5 of your Exhibit 20?

A. This exhibit sets forth a schedule of administrative and general expenses which, I believe, is self-explanatory with possibly the exception of general office salaries shown as $1,274. Tak-

ing this figure and totaling it with the office salaries at the Lafayette terminal, $1,260.01, and that at the Indianapolis
318 terminal, $2,446.08, we arrive at a total of $4,980.09, as shown on one of my previous exhibits under the item "General Office Salaries" under the subhead of Administrative and General Expenses.

For the purpose of this study, I have considered the tonnage which moves between Lafayette and Indianapolis. The length of haul is 61 miles and our average pay load is 13,951 pounds.

In this connection, it is further pointed out that because of the business recession during the last year, our average load has dropped from approximately 20,000 pounds to the figure just indicated. The average number of pounds of freight received from the consolidator or freight forwarder each day was 7,316 pounds, which figure is admitted to be less than in 1936, and it is estimated that with the return of business, this figure will increase about 40 percent.

Q. Pardon me, Mr. Whistler, but you mentioned the figure of $4,980.09 as being the total that you arrived at as shown on a previous exhibit. Did you mean that was the figure shown on page 1 of your exhibit 20?

A. That is right.

Q. Now, will you refer to page 6 of this exhibit 20 and continue with your testimony?

A. My next three items have been already explained and it is to be noted that the ratio of expense to revenue is 86.2 per-
cent, leaving 13.8 percent of the revenue for executive
319 salaries and dividends. The stock in our corporation is owned by members of the immediate Whistler family.

My next figure showing terminal to terminal cost is explained on the exhibit and includes pick-up-and-delivery service performed by road haul trucks and this applies equally through to the 19 cents per mile cost as shown therein. I have endeavored to break down the method of handling freight in the Indianapolis terminal. As has been previously stated, $5,804 was paid for cartage in Indianapolis. We pay 6 cents per one hundred pounds for this pick-up-and-delivery service and that represents a total number of pounds of 9,673,333. Practically every pound of our local freight is picked up or delivered by cartage carriers in Indianapolis. As our road haul truck either picks up or delivers from or to the consolidator or freight forwarder, we have shown the total number of pounds delivered or picked up by road haul trucks in Indianapolis as being over seven million pounds.

The cost of the pick-up or delivery in Indianapolis by road haul trucks has been figured at 2.1 cents per one hundred pounds.

The actual cost between terminals is arrived at by deducting the amount apportioned to pick-up or delivery from the total terminal to terminal expense and divided by total pounds.

Q. That is by the total number of pounds?

320 A. That is right.

Having still the feature of other expenses and the distributing of administrative and general expense, my item of 13.7 cents per one hundred pounds is arrived at by taking all remaining items of general expense as a group, then totaling them and dividing by the total number of pounds handled. This figure appears to be way above normal for as I have said before, with the same overhead, and practically the same expense under normal conditions, our business would be at least eight million pounds more handled.

For example, this distributed amount of 13.7 cents per one hundred pounds would drop to 9.4 cents per one hundred pounds if we had handled with the same overhead twenty-five million pounds, and if we had handled thirty million pounds, the 13.7 cents per one hundred pounds would drop to 7.8 cents per one hundred pounds. My figures show that my total cost for handling local freight is 27.5 cents per one hundred pounds which figure includes the cost of delivery by pick-up trucks in Indianapolis, and where the delivery is made by road haul trucks, my cost is 22.3 cents per one hundred pounds.

As all of my forwarding company traffic is either picked up or delivered in Indianapolis with the road haul trucks, I am firmly convinced that the handling of forwarding company traffic is and will continue to be a profitable business. Because of

321 distribution of fractions in tearing down these figures, it is frankly my thought that even further adjustments should be made in the actual cost over a year's time as against a single tear-down and the figures in perfect balance would show for handling of forwarding company traffic 21.3 cents per one hundred pounds and for local traffic handled by pick-up-and-delivery trucks in Indianapolis, 28.6 cents.

Q. Now, with respect to solicitation, Mr. Whistler, I notice on sheet 5 of Exhibit 20, an item of $1,091.32?

A. That is right. That is our solicitor's salary at Indianapolis.

Q. Now, is any portion of that salary really assignable to the portion of the business you received from the freight forwarders?

A. No.

Q. Do you solicit any freight for the freight forwarders?
A. No, sir; we do not.
Q. At Indianapolis.
A. No, sir.
Q. Do you solicit any freight for the freight forwarders at Lafayette, Indiana?
A. We do not.
Mr. BORN. That is all with this witness.
Mr. TURNEY. I have no questions.
The WITNESS. There is one question that has not been answered and I would like to answer it.

322 By Exam. LATER:

Q. Go ahead.
A. It was answered this morning and I do not feel it is quite right. That is where regulation caused loss of business. It has not in our case at all.
Q. It has not in your case?
A. No, sir; it has not. It is due to the recession of business that there is no business, not regulation. I am only speaking of our own case there.
Q. Might I ask one question and that is, do you publish your own tariffs?
A. Yes, sir.
Mr. BORN. I think the question was misunderstood. Aren't you a party to the agency tariffs?
The WITNESS. Oh, yes; and we have our own tariffs, too.

By Exam. LATER:

Q. I notice $187 tariff expense for a year.
A. We are a party of the Tariff Bureau.
Mr. BORN. That is the Central States Motor Freight Bureau, Inc.
The WITNESS. Yes.

By Exam. LATER:

Q. Does that include your dues to the Bureau?
A. The cost of supplements.
Q. In addition to that, you are required to pay $30 a month, are you not?

323. A. No. I think that our portion of it is $12 a month.

Cross-examination by Mr. TURNEY:

Q. Mr. Whistler, if you were under regulation, would you have any qualms at all about publishing or charging this rate proposed in these tariffs?

A. I believe we are better since we are under regulation than we were before we were under regulation.

Q. Well, I think we will all agree with that, but that was not my question. What I am getting at is, do you think this proposed rate is a reasonable rate, such as you would charge on your own initiative if you were not under regulation?

A. Yes, sir.

Q. Then if under regulation you should lose this business because of inability to publish this rate, regulation would hurt you rather materially, wouldn't it?

A. Well, I do not think you would lose that business on account of regulation.

Q. Well, if you did not get it you would lose it.

A. Well, we have lost a certain amount of it through factory shut-downs. We used to go out and load up for the forwarding companies two solid truckloads a day, from the Brown Rubber Company, and today they will call up and say they have 10 or 12 packages for us against two truckloads a day.

Mr. TURNEY. That is all.

Exam. LATER. Are there any other questions?

324 (No response.)

Exam. LATER. You are excused, Mr. Witness.

(Witness excused.)

J. C. NICHOLS was sworn and testified as follows:

Direct examination by Mr. BORN:

Q. What is your name?

A. J. C. Nichols.

Q. Where do you reside?

A. Columbus, Indiana.

Q. With what company are you associated, Mr. Nichols?

A. Southern Transportation Company.

Q. And their principal office is where?

A. In Columbus, Indiana.

Q. In what business are they engaged?

A. Common carrier of property by motor vehicle.

Q. In what connection are you associated with that company?

A. I am traffic manager.

Q. How long have you been engaged as traffic manager?

A. Three years.

Q. What experience have you had, Mr. Nichols?

A. Well, I was with the Southern Railroad for ten years. I have been with the present company three years.

Q. Were you with the Southern Railroad Company at Chattanooga, Tennessee?

A. That is correct.

325 Q. What were your duties with the Southern Railroad Company?

A. I was in the operating department and in the tariff department.

Q. Are you acquainted with the issues in this proceeding?

A. I will say yes. I have spent considerable time in the last six months relative to this matter.

As far as the Indiana operators were concerned, we had various meetings relative to the publication of a tariff and I was chosen secretary of a group which is styled, which has styled itself the Indiana Intra-State Operators.

Q. Were the rates as shown in the suspended tariff MF-ICC B-146, approved by the participating carriers therein before request was made upon Agent Meyers for publication?

A. Indeed they were, and the rates as shown in this suspended tariff were agreeable to each participating carrier.

Q. Do you know the exact number of participating carriers in this tariff under suspension?

A. 44.

Q. Do these carriers who participate serve generally all portions of the state of Indiana?

A. They do. I might add that the manner in which the key points are set up, meaning Evansville, Indianapolis, Ft. Wayne, Muncie, and South Bend, there is available a carrier who can reach at least one of these points without extreme road haul.

326 Q. Now, have you had an opportunity to examine the Exhibit 2, which was introduced in evidence by Witness Girard, particularly that portion referring to Motor Freight Tariff No. 64-A?

A. I have had an opportunity of examining the exhibit. Reference was made to the listing of Indiana towns as set forth on three pages and the reference therein made is correct. I had prepared a somewhat similar exhibit but there is no reason to burden the record by duplication.

Q. Now, Mr. Nichols, as Secretary of the Indiana Intra-State Operators, have you had requests by carriers other than those who are now shown as participating carriers to become participating carriers?

A. Yes, we have. In addition to those carriers as shown in Witness Girard's Exhibit 2, under No. 41 to 45, inclusive, these additional carriers have evidenced a desire to become parties to

this tariff if and when the suspension is listed and the tariffs are allowed to become effective.

Q. Do any additional names come to your mind at this time, Mr. Nichols?

A. Yes, sir: I have one more request. That was the D. G. Trucklines in Union City, Indiana.

Q. Are the rates set forth in this tariff at least equal to the division of the rate which was received by the Indiana carrier for a like haul when operating under the carloading companies' tariffs?

327 A. From the open discussion which we had at the meetings the rates are in no instance lower than the divisions received by the Indiana carriers.

Q. Is this a tariff proposed by the motor carriers?

A. It certainly is. It was published at the request and demand of the motor carriers.

Q. Are you personally acquainted with the operating heads of the participating carriers as listed in the suspended tariff?

A. In answer to that question I will say that for the last six months I have been in contact with practically every operator shown in this tariff and they are all anxious to see the tariff become effective.

Q. Did you make any investigation to determine the manner in which the carloading freight is picked up or delivered at these key points?

A. I have spent considerable time at each one of these key points and not only have I been told that in every instance the road haul truck picks up or delivers but I have seen that such a fact is true upon each of my investigations.

Q. Now, with respect to your company, do you handle freight from and to the forwarder?

A. We do. We consider it not only profitable but without it we have serious doubt that we could continue to give the public the service we are rendering at the present time.

328 Q. This freight that you receive from the forwarders, has that helped to balance your operation between Columbus and Indianapolis?

A. That is one of the principal items in our operation. Practically everything in Columbus is bought in Indianapolis. Even the foundries supplying the castings to our territory is practically all bought in Indianapolis. That throws a heavy part of our business in Indianapolis.

Mr. TURNEY. You mean outbound from Indianapolis?

The WITNESS. I am talking about from Indianapolis to Columbus.

By Mr. Born:

Q. Where is the main volume of tonnage you receive from the forwarder? Do you receive that from Columbus or Indianapolis?

A. The forwarding business is received in Columbus, and without that there would be lots of days we would not haul 500 pounds north if it were not for the forwarding companies. Now, an exhibit we will come to later will bear me out in that. Practically all of our freight from Columbus to Indianapolis is forwarding company business and without that it would be just a matter of time until our company would fold up and with the loss of this business we would cut off at least twelve of our employes the day that it ceased. We would then cut off additional help on our equipment, but, of course, the deadheading until we could
329 get this stuff back from Indianapolis, naturally it is going to hurt our service. We will have to maintain that for a time but with operating three trucks a day north to Indianapolis, you can imagine how long we can operate, handling 40 percent freight from Indianapolis to Columbus at 17 cents a hundred.

Q. Now, if this forwarder service were discontinued to Columbus, Indiana, how many trucks do you estimate you would have to operate in deadhead service?

A. Yes.

Q. Per day deadhead?

A. Yes.

Q. At the present time, because of this forwarder service, you have been able to maintain an operation in both directions with fairly good loads, is that correct?

A. Yes, and I believe that can be checked by the testimony of the two Columbus representatives in the amount of freight that moves north out of Columbus that they testified to yesterday.

Q. Is your company the company that gives such good service to the Reeves Pulley Company?

A. Yes.

Q. And they ship quite a bit of freight each day in connection with the forwarders, do they not?

A. Yes, sir. Could I explain that service?

Q. I would like to have you explain it.

330 A. At one o'clock each day we send a 24-foot semi to the Reeves Pulley Company platform. We send another 24-foot semi to the Cummins Engineering Company who are manufacturers of Diesel engines. Those trucks are completely loaded at each place every day with forwarder-company business. That shuttle service to them has not only meant business, but our service there

has meant something to those companies. If they have a shipment that must make connection positively with the forwarder, it is not only a national organization, but it is international, and we can get service through our forwarding companies that cannot be beat by anybody. These companies know when they turn over anything to us in connection with the forwarder, their worries are over.

Now, these trucks that go to these two principal companies in Columbus leave there in time—Well, if there is a rush shipment there we can hold them in Columbus until four o'clock. Each and every shipment on that truck is forwarded from Indianapolis that night and an overnight service can be had through the forwarding companies within a radius of 200 to 300 miles, and be on their customers' floor the next morning by ten o'clock.

Q. Do you mean you have synchronized your service in such a way that you can leave Columbus, Indiana, at four o'clock and the forwarder company will get that freight out of Indianapolis that evening?

331 A. All three forwarding companies in Indianapolis depend on us being there because we come in with loads every day.

Q. As I understand your operation, it is principally between Columbus, Indiana, and Indianapolis, Indiana?

A. That is right, except our line extends to Seymour.

Q. Now, in handling freight from and to the forwarders at Indianapolis, please state for the record whether or not such delivery and pick-up is made with your road haul equipment.

A. In addition to what I just explained about the other two companies, every pound delivered or received from the forwarder at Indianapolis is picked up and delivered with our own road-haul equipment. The same truck that picks it up in Columbus delivers it to the docks in Indianapolis, and we do not even touch that freight. It is unloaded by the forwarder.

Q. Now, have you prepared certain exhibits to be introduced in this case?

A. I have. In each and every instance they have been prepared under my personal supervision.

Q. Will you now turn to your exhibits and take them up and make such remarks as you believe are necessary?

A. My first exhibit, No. 21, is a study of tonnage handled by our company, the Southern Transportation Company and this study covers the period between September 1st and October 1st, 1937.

332 The average rate as shown in the first grouping is in cents per hundred pounds, and it is to be noted that the average on

our local freight is less than our third class and on the tonnage received from the consolidators or forwarders it is 22.7 cents per 100 pounds in excess of the fourth-class rate.

The forwarders' business pays us an average revenue of 2.5 cents per one hundred pounds more than we receive from our interline business. Considering the volume of business and the ease of handling and the elimination of Indianapolis terminal expense, it is my frank opinion that the forwarder business, while not earning as much as we receive from local tonnage, is much more attractive to our line and more profitable.

The lower portion of this exhibit shows our class rate and the division of the rate we receive for the Columbus-Indianapolis portion of the haul in connection with shipments from Columbus to Cleveland, Chicago and Milwaukee. I might further add in making this study that I determine that the average of our interline freight is approximately third-class.

My next exhibit, which is No. 22, is a statement showing distances, rates proposed and revenues thereunder. The mileages have been checked very carefully and were taken from the official road log of the Indiana State Highway Commission. The rates as
333 set forth are those in the suspended tariff. The figures representing truck mile revenue and revenue per ton mile are in cents. For example, the Muncie-Albany truck mile revenue is 125 cents and the revenue per ton mile is 25 cents.

I have taken this exhibit as being representative of the entire situation and I believe this demonstrates that the mileages are in the most part less than 40 miles and in the one instance where I have shown the rate between Indianapolis and Rockport, it was the furthest point that I could determine on which a rate is published. I will explain that distance.

There is also contained in the tariff under suspension, a rate of 15 cents per hundred pounds from Rockport, Indiana, to Evansville, Indiana, where the mileage is only 28, and this is a logical key point that traffic would move from and to. The rates as set forth in this tariff range from 10 cents per one hundred pounds to 40 cents per one hundred pounds. I believe the exhibit is self-explanatory.

By Exam. LATER:

Q. There was one question there, that I was going to ask, in connection with Exhibit 21, and that is, do you have the average length of hauls under which each of these average rates were calculated?

A. 44 miles.

Q. 44 miles in all instances?

A. 44 miles in all instances.

Q. All right, go ahead.

334 A. My next exhibit, which is No. 23, makes a comparison of suspended rates with fourth class rate applicable within the State of Indiana. The points as shown on this exhibit are all within the State of Indiana, and the figures in each column represent rates in cents per one hundred pounds. I have shown both the 15879 scale and the disque scale for the reason that in the State of Indiana there is no real uniformity in class rates and one truck operator will be operating under the old disque scale and another operator will have local rates under the 15879 scale.

My next exhibit, No. 24, sets forth certain proportional rates applicable in Ohio via common carrier truck lines, as set forth in Agent H. O. Hull's tariff P. U. C. O. No. 3, effective April 1, 1936. In supplement 10 to this tariff, effective August 26, 1937, the publishing agent shows as C. M. Byrne, successor to H. O. Hull.

The application applies on shipments of freight destined to or originating at certain stations shown in the tariff and then only when such shipments move via Store Door Freight Service, Inc., a freight forwarder, or Elway Transit Company over the lines of the Cincinnati and Lake Erie Railroad Company. The rates as shown on this exhibit are in cents per one hundred pounds.

My next exhibit, No. 25, is a comparison of rates under suspension with those applicable by the Cincinnati and Lake
335 Erie Railroad Company. In their tariff No. G. F. D. No. 292, P. U. C. O. No. 121, issued by D. R. Ryan, Tariff Agent, Cincinnati, Ohio. The rates as set forth in this exhibit are in cents per one hundred pounds and as far as the application is concerned over the C. & L. E. applies——

By Exam. LATER:

Q. In Exhibit 24 you have "Rates Proposed" off to the side. What do you mean by that?

Mr. TURNEY. I can straighten that out, your Honor. That is the rate taken off of one of the previous exhibits as being in the suspended tariff.

Exam. LATER. And for a distance of 46 miles and other mileages shown?

Mr. BORN. That is correct.

You will notice on Exhibit 25, for 106 miles there is no rate shown in the column "Rates Proposed" for the reason there is no mileage for 106 miles.

Exam. LATER. I see. Okay.

The WITNESS. What did I say last?

(The last part of the witness' statement was read.)

The WITNESS. I was saying that the rates as set forth in this exhibit are in cents per one hundred pounds and as far as the application is concerned over the C. & L. E. Railroad, applies on all commodities of any class or description in straight or mixed shipments except bulky articles, automobiles, live
336 poultry and livestock. These rates are subject to a minimum under Column A of 10,000 pounds and under Column B of 20,000 pounds.

By Mr. BORN:

Q. Now, the Indiana rates that you show on this exhibit are taken from the tariff under suspension and are merely placed here as a comparison.

A. That is right.

Now, my next exhibit, No. 26, is a statement of quantity less truckload rates and applicable in central territory. When the class rate is from 14–30 cents, a 1 cent reduction is granted for shipments of 5,000 pounds, and when the class rate is from 31–50 cents, a 2 cent reduction is given, and when the class rate is from 51 cents–$2.50, a reduction of 3 cents is given.

When the shipments total 10,000 pounds, reductions are granted ranging from 3–5 cents. When shipments total 16,000 pounds, rates are reduced from 4–7 cents, as shown on this exhibit. Rates from points in Michigan and those in Indiana when handled in connection with the Transamerican Freight Lines, are reduced from 4–7 cents per one hundred pounds on shipments of 10,000 pounds or more.

Q. Now, do I understand this exhibit correctly, that where the class rate is from 31 cents to 50 cents a reduction in rate of 7 cents per one hundred pounds is given for shipments of 10,000 to 16,000 pounds?

A. Yes. Now, you read there first from 31 cents to 50 cents.

337 Q. That is correct.

A. There is a 2 cent reduction.

Now, may I have that question again?

(The question was read.)

The WITNESS: That is right. 7 cents is given on 10,000 pounds.

Q. That is where the class rate is between 31 and 50 cents?

A. Yes, sir.

Exam. LATER: I do not understand that. You have got it in here that when it is 5,000 pounds and over, as I understand it, you get a 2 cent reduction.

A. 31 cents to 50 cents, two, five, and seven.

Q. Yes.

A. Well, from 10,000 pounds to 16,000 pounds, I thought he had taken that as a minimum.

Q. No.

Mr. BORN: I had reference, your Honor, to the lower portion of this exhibit which shows that taken in points from Michigan to Indiana, 10,000 pounds, there is a reduction of 7 cents per one hundred pounds where the class rate is 31 cents to 50 cents.

Exam. LATER: Oh, I thought you referred to that reduction in rate because of volume.

Mr. BORN: I did, your Honor, and I wanted to bring out also that certain tariffs give a 7 cent reduction for 10,000
338 pounds minimum while other tariffs give a 7 cent reduction where there is a 16,000 pound minimum.

Exam. LATER: I get it.

The WITNESS: My next exhibit, which is No. 27, sets forth the rate in effect by rail carriers for the handling of freight of all kinds between various points. It is to be noted that the rail carriers charge rates of from 5 cents to 9 cents less than the existing fourth class rail rate. While this exhibit is headed "Freight of all kinds" there are a few exceptions as set forth in the tariff, which I do not have with me at the present time, but they can be furnished.

My next exhibit, No. 28, is a statement of commodity rates with minimum of 5,000 pounds applying between Chicago, Illinois and Cincinnati, Ohio and Louisville, Kentucky. On these rates, as set forth for shipments of 5,000 pounds, the rates range from 4 cents to 9 cents per one hundred pounds, less than the existing fourth class truck rate. All the commodities shown on this exhibit are rated fourth class or higher in the classification.

By Mr. BORN:

Q. Now, directing your attention to Item 12 on this exhibit 28, is there a correction you wish to make in your fourth class truck rate from Louisville, Kentucky to Chicago, Illinois?

A. Yes. There should be 44 cents per hundred pounds.

My next exhibit is a statement setting forth proportional
339 rates, when a portion of the through transportation is handled in connection with water carriers, and to my knowledge there is no definite published rate covering the ocean or lake operation of the haul. I know from my own knowledge that wood pulp is imported into this country, coming into Toledo

by way of the Great Lakes and is unloaded and shipped to St. Marys, Ohio.

Q. There is a paper board mill located at St. Marys, is there not?

A. Absolutely.

Imported fertilizer and fertilizer materials also move through New Orleans into Indiana. There is actual movement of coal under the rates as shown in this exhibit.

Now, my next exhibit, No. 30, is a comparison of export rates with the domestic rates, which on its face, I believe, is self-explanatory.

It has been directed to my attention that the suspended tariff No. 64-A, MF ICC B-146, contains certain rates higher for a shorter distance than for a longer distance over the same line in the same direction. Any such instance is inadvertent and will be eliminated or corrected to meet the condition prevailing at the more distant point. While I know of no provision in the Motor Carrier Act, 1935, which touches on the subject of long and short haul provisions, it was not the intent of the framers of the
340 tariff that that condition should exist. The instances are so few that we do not believe it will have any effect on our ability to justify the tariff and I merely make this statement in order that the Commission may know that if this tariff is approved, these corrections will be forthcoming.

That is all.

(Witness excused.)

Exam. LATER. We have two questions to settle at this time.

The first one is that the free copy of the transcript for the respondents will go to Mr. Girard. There are no protestants as far as I know. There will be no free copy for any protestant.

Mr. BORN. I would like the record to show that Exhibits 21 to 30, both inclusive, have been received in evidence.

Exam. LATER. That is right. The record may show they are in evidence.

(Exhibits 21 to 30, both inclusive, received in evidence.)

Exam. LATER. Mr. Turney, what is your pleasure with respect to briefs?

(Discussion off the record.)

Exam. LATER. Briefs will be due in Washington on March 28, 1938.

341 That is all. The hearing is closed.

(At 2:45 o'clock P. M., February 25, 1938, hearing closed.)

342 *Exhibit 1*

Applicable only on Interstate Traffic

MF-I. C. C. No. B-138—Issued in lieu of MF-I. C. C. No. B-132 rejected by the Interstate Commerce Commission

CENTRAL STATES MOTOR FREIGHT BUREAU, INC.

W. L. Meyers, Agent

Stamp here ..... date received

Motor Freight Tariff No. 61-A—Issued in lieu of Motor Freight Tariff No. 61 rejected by the Interstate Commerce Commission, for account of participating carriers named on page 2, naming proportional rates between Chicago, Ill., and stations in Wisconsin (as named herein). Applying on all freight of every class and description (except as otherwise noted herein) in straight or mixed shipments when such freight originates at or is destined to stations named herein when final destination or origin is located outside of the States of Illinois or Wisconsin. Governed, except as otherwise provided herein, by the National Motor Freight Classification No. 2 (East), Agent C. F. Jackson's MF-I. C. C. No. 4, supplements to or successive issues thereof. Issued October 26, 1937. Effective December 1, 1937. Issued by W. L. Meyers, Agent, 616 So. Michigan Ave., Chicago, Ill. Communications regarding rates published herein should be addressed to the traffic officials of the participating carriers.

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EXPLANATION OF ABBREVIATIONS

Abbreviation	Explanation	Abbreviation	Explanation
¢	Cents.	No	Number.
$	Dollars.	N. O. I	Not otherwise indexed in National Motor Freight Classification No. 2, Agent C. F. Jackson's MF-I. C. C. No. 4.
C. o. d	Collect on delivery.		
d/b/a	Doing business as.		
Inc	Inclusive or incorporated.		
Ill	Illinois.	L. T. L	Less truck load.
K. D	Knocked down.	S. U	Set-up.
N. M. F. C	National Motor Freight Classification.	Wis	Wisconsin.

PARTICIPATING CARRIERS

Carriers parties to tariff are as shown below	Under power of attorney to W. L. Meyers, agent
	I.C.C. MFXA1 No.
Advance Transportation Company, Milwaukee, Wis	8
Commercial Truckers, Racine, Wis	7
Co-Ordinated Transport, Inc. of Illinois, Chicago, Ill	28
Gripps Overland Express, Inc., Chicago, Ill	4
Joseph A. Dunn and Wm. J. Dunn, d/b/a, Dunn Transport Company, Racine, Wis	101
Ever-Ready Transit Co., Inc., Chicago, Ill	4
Northwestern Transit, Inc., Michigan City, Ind	12
Tony Consentino, d/b/a, O. K. Motor Service, Chicago, Ill	4
Fred Olson & Son Motor Service, Inc., Chicago, Ill	11
J. L. Scheffler Forwarder, Chicago, Ill	7
M. J. Seiwert Forwarding Company, Chicago, Ill	4
Service Transport Company, Racine, Wis	4
Webber Cartage Line, Inc., Waukegan, Ill	47
Yule Truck Lines, Inc., Kenosha, Wis	4

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344 : Suspension Notice (I. & S. Docket No. M-247)

Supplement No. 1 to MF-I. C. C. No. B-138

CENTRAL STATES MOTOR FREIGHT BUREAU, INC.

W. L. Meyers, Agent

Stamp here ..... date received

Supplement No. 1 to Motor Freight Tariff No. 61-A for account of participating carriers named on page 2 of tariff, naming proportional rates between Chicago, Ill., and stations in Wisconsin (as named in tariff) applying on all freight of every class and description (except as otherwise noted in tariff) in straight or mixed shipments when such freight originates at or is destined to stations named in tariff when final destination or origin is located outside of the States of Illinois or Wisconsin. Issued November 30, 1937. Issued by W. L. Meyers, Agent, 616 So. Michigan Ave., Chicago, Ill.

216316—40——14

345 ORDER

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 29th day of November, A. D. 1937

Investigation and Suspension Docket No. M-247

Proportional Rates Between Chicago and Wisconsin Points

It appearing, That there has been filed with the Interstate Commerce Commission a tariff containing schedules stating new individual and joint rates and charges, and new individual and joint regulations and practices affecting such rates and charges, to become effective on the 1st day of December, 1937, designated as follows:

W. L. Meyers, Agent: MF-I. C. C. No. B-138;

It is ordered, That the Commission upon its own motion, without formal pleading, enter upon a hearing concerning the lawfulness of the rates, charges, regulations and practices stated in the said schedules contained in said tariff.

It further appearing, That said schedules make certain reductions and changes in rates for the transportation of various commodities in interstate and foreign commerce and the rights and interests of the public appearing to be injuriously affected thereby, and it being the opinion of the Commission that the effective date of the said schedules contained in said tariff should be postponed pending said hearing and decision thereon;

It is further ordered, That the operation of all said schedules contained in said tariff be suspended, and that the use of the rates, charges, regulations, and practices therein stated BE DEFERRED UPON INTERSTATE AND FOREIGN COMMERCE UNTIL THE 1st DAY OF MARCH, 1938, unless otherwise ordered by the Commission, and no change shall be made in such rates, charges, regulations, and practices during the said period of suspension unless authorized by special permission of the Commission.

It is further ordered, That the rates and charges and the regulations and practices thereby sought to be altered shall not be changed by any subsequent tariff or schedule until this investigation and suspension proceeding has been disposed of or until the period of suspension and any extension thereof has expired, unless authorized by special permission of the Commission.

It is further ordered, That a copy of this order be filed with said schedules in the office of the Interstate Commerce Commission, and that copies thereof be forthwith served upon the carriers parties to said schedules and upon Agent W. L. Meyers and that said carriers parties to said schedules be, and they are hereby, made respondents to this proceeding.

It further appearing, That the above-entitled matter is one which the Commission is authorized by the Motor Carrier Act, 1935, to refer to Examiner A. E. Later:

It is further ordered, That the above-entitled matter be, and it is hereby, referred to Examiner A. E. Later for hearing and for the recommendation of an appropriate order thereon, to be accompanied by the reasons therefor;

It is further ordered, That this matter be assigned for hearing before Examiner A. E. Later on the 1st day of February, A. D. 1938, at 10:00 o'clock A. M. (Standard time), at the Hotel Sherman, Chicago, Illinois.

And it is further ordered, That any party desiring to be notified of any change in the time or place of the said hearing (at his own expense if telegraphic notice becomes necessary), or desiring to be served with future orders and notices in this proceeding, shall advice the Bureau of Motor Carriers of the Commission, Washington, D. C., to that effect by notice which must reach the said Bureau within ten days from the date of service hereof and that the date of mailing of this notice shall be considered as the time when said notice is served.

By the Commission, division 5.

[SEAL] W. P. BARTEL, *Secretary.*

Suspension Notice

The effective date of tariff is hereby suspended until March 1, 1938.

[2]

346 Rules and Regulations

Rule No.	Explanation
5	Time limit.—A period of not more than forty-eight (48) hours will be allowed at any reforwarding point named in this tariff, within which time limit shipments to be reforwarded under the provisions of this tariff must be tendered to the carrier performing the outbound movement from such reforwarding point.
10	Outbound billing.—The outbound billing from Chicago, Ill., to any point named in this tariff, must show reference to the carriers' bill of lading or manifest under which shipment reached such reforwarding point as part of a truckload consignment or carload consignment.
15	Inbound billing.—The inbound billing to Chicago, Ill., from any point named in this tariff, must show thereon the ultimate destination to which shipment is to be reforwarded as part of a truckload consignment or carload consignment.
20	Collection of freight charges.—Shipments moving under rates named in this tariff from Chicago, Ill., to any point named in this tariff shall be "prepaid" to the carriers parties to this tariff. Shipments moving under rates named in this tariff from any point named in this tariff to Chicago, Ill., shall be "collect" to the carriers parties to this Tariff.
25	Loading and unloading of heavy or bulky freight.—Parties tendering freight are required to load into or on truck, heavy or bulky freight for forwarding by carriers parties to this tariff and receivers of freight are required to unload from truck heavy or bulky freight forwarded by carriers parties to this tariff, which cannot ordinarily be handled by the man operating the vehicle.
30	Impracticable operation.—Nothing in this tariff shall be construed as making it binding on carriers parties to this tariff to receive freight at, or make delivery to premises at which on account of condition of alleys, streets or highways, it is impracticable to operate vehicles.

Rules and Regulations

Rule No.	Explanation
35	Delivery.—(a) When shipment once tendered for delivery and such delivery cannot be affected through no fault of carriers parties to this tariff, notice of attempted delivery shall be sent or given consignee or party entitled to receive same by carrier's Agent in writing or as otherwise agreed to by carrier and consignee, within twenty-four hours (one day) afterarrival of shipment and billing at destination, such notice to specify point of shipment and commodity Such notice will constitute notice of arrival.
	(b) When through no fault of carrier parties to this tariff, a reasonable effort to effect delivery is first made during business hours, or a shipment cannot be delivered after tender of delivery and a redelivery is made, a charge of ten (10¢) cents per 100 pounds, with a minimum charge of twenty-five (25¢) cents shall be assessed against the ultimate consignee for subsequent delivery, plus accrued freight, storage and other lawful charges.
40	Storage rules, regulations, and charges.—All non-perishable freight refused, unclaimed, and/or undelivered for any reason beyond the carrier's control will be returned to carrier's nearest terminal and thereafter will be stored at the expense of the owner and held subject to the following charges for storage.
	Forty-eight (48) hours (two days) free time will be allowed for the removal of freight from carrier's premises, which time will be computed from the first 7:00 A. M. after arrival of shipment at destination, or tender of delivery, Sundays and legal holidays excepted.
	Shipments held in or on carrier's premises in excess of free time allowed will be subject to the following storage charges per day, or at option of carrier may be sent to Public Warehouse. (See Note 1.)
	For each of the first five (5) days, 1½ cents per 100 pounds. For the sixth (6th) and each succeeding day, three (3¢) cents per 100 pounds; minimum storage charge per shipment on freight held beyond free time, five (5) days or part thereof, twenty five (25¢) cents; six (6) days or more, fifty (50¢) cents.
	NOTE 1.—In addition to rate named for storage, a charge of ten (10¢) cents per 100 pounds, minimum of twenty-five (25¢) per shipment, will be made for extra handling of shipment sent to public warehouse.
45	Collect on delivery shipments (c. o. d.) applicable only on shipments originating at points named herein.—
	(a) Unless otherwise instructed in writing on each specific shipment by the consignor only cash or certified check in favor of reforwarding carrier will be accepted in settlement of C. O. D. amounts and such amount will be remitted to consignor, unless otherwise specifically instructed in writing by such consignor, only after collection of such C. O. D. amount from the consignee.
	(b) If such specific instructions of the consignor permit acceptance of consignees check in favor of the consignor, the carrier's responsibility thereunder shall be limited to securing and transmitting such check.
	(c) Consignors invoices or collection papers properly filled in, enclosed in return-addressed envelopes, must be securely attached to the shipping order (copy of Bill of Lading).
	(d) The provisions of this Rule apply only on shipments moving on uniform straight bills of lading.
	The Letters "C. O. D.", and the name and address of the consignor and consignee must be plainly marked on each package with which a bill is sent to be collected on delivery. "C. O. D." amount to be collected must be shown in prominent place on shipping order.

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347	(e) When two or more packages are sent by one consignor to the same consignee at the same time with separate C. O. D.'s or when one of the packages is C. O. D. and the other or others are not, such packages bearing separate C. O. D.'s must be billed as individual shipments and charges assessed accordingly.
	(f) C. O. D. shipments will not be accepted with the privilege of examination or trial, or bearing instructions to make partial delivery.
	(g) C. O. D. shipments will not be accepted or receipted for when billed to one firm or person with instructions to collect charges from another firm or person.
	(h) Carrier's charge for C. O. D. collections will be deducted from the amount of the shipper's invoice, unless other arrangements are specifically concurred in by shipper and consignee, and the reforwarding carrier is so instructed in writing.
	NOTE.—C. O. D. shipments destined to points beyond car destination of reforwarding carrier, will not be reshipped until remittance has been received at the office of the said specified carrier.
	(i) Check remittance of C. O. D. amounts will be made to shipper not later than ten (10) days following receipt of consignees check as provided in Paragraph (a) hereof.
	Exception: C. O. D. shipments of any spirituous, vinous, malted or other fermented liquor or any compound containing any spirituous, vinous, malted or other fermented liquor fit for use for beverage purposes, will not be accepted for transportation in Interstate Commerce under this Rule, when consigned to any State, Territory or District of the United States, or place non-contiguous to but subject to the jurisdiction thereof, which prohibits the delivery or sale therein of such liquor (see Section 389 of title 18, U. S. C. Criminal Code, Section 239, as amended June 25th, 1936).

A charge will be made for the collection and remittance of C. O. D. amounts as follows:

Shipper's c. o. d. amount	Collection and remittance fee	Shipper's c. o. d. amount	Collection and remittance fee
Not over $5.00	$0.20	Over $450.00 and not over $500.00	$1.70
Over $5.00 and not over $10.00	.25	Over $500.00 and not over $550.00	1.85
Over $10.00 and not over $25.00	.31	Over $550.00 and not over $600.00	2.00
Over $25.00 and not over $50.00	.37	Over $600.00 and not over $650.00	2.15
Over $50.00 and not over $75.00	.45	Over $650.00 and not over $700.00	2.30
Over $75.00 and not over $100.00	.50	Over $700.00 and not over $750.00	2.45
Over $100.00 and not over $150.00	.65	Over $750.00 and not over $800.00	2.60
Over $150.00 and not over $200.00	.80	Over $800.00 and not over $850.00	2.75
Over $200.00 and not over $250.00	.95	Over $850.00 and not over $900.00	2.90
Over $250.00 and not over $300.00	1.10	Over $900.00 and not over $950.00	3.05
Over $300.00 and not over $350.00	1.25	Over $950.00 and not over $1,000.00	3.20
Over $350.00 and not over $400.00	1.40	Over $1,000.00 a rate of $3.20 per $1,000.00.	
Over $400.00 and not over $450.00	1.55		

For explanation of abbreviations, see page 1.

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348 Section 1—proportional rates in cents per 100 pounds applicable between points named herein

[5]

349 PROPORTIONAL RATES APPLICABLE BETWEEN STATIONS NAMED IN THIS SECTION

Item	Application of rates
5	Rates named in this section apply on— (a) "All freight", (except as otherwise provided in Item 15, which has been transported to the origin station named herein, as a part of a truck-load consignment or carload consignment moving under tariffs or schedules lawfully on file with the Interstate Commerce Commission and immediately reshipped in the original package as an L. T. L. shipment; or (b) "All freight", (except as otherwise provided in Item 15, which is to be transported to the destination station named herein as an L. T. L. shipment, and immediately reshipped in the original package as part of a truck-load consignment or carload consignment moving under tariffs or schedules lawfully on file with the Interstate Commerce Commission. (c) For the purpose of this Item, the origin station referred to in Paragraph (a) and the destination station referred to in Paragraph (b) shall be Chicago, Ill.
10	Pick-up and delivery.— (a) Rate includes pick-up at distributing station and one delivery at sidewalk, shipping platform, elevator grade entrance, or store door of ultimate consignee, on freight on which application of rates under Paragraph (a) of Item 5 applies. (b) Rate includes one pick-up at sidewalk, shipping platform, elevator grade entrance or store door of original shipper, and delivery to reforwarding station, on freight on which application of rates under Paragraph (b) of Item 5 applies. (c) No allowance will be made in lieu of store door delivery or pick-up.
15	Restricted articles.—The following articles will not be accepted for shipment: Airplanes, or parts thereof, not including engine or engine parts; animals, stuffed; articles made of precious metals; articles of extraordinary value; bank bills; boats; butter; coins; corpses; commodities in bulk requiring shoveling, such as coal, sand, gravel, cinders, ore, etc.; cream, fresh; currency; deeds; documents; drafts; eggs; explosives and other dangerous articles; fertilizer; fireworks, other than specified in N. M. F. C.; florist stock, other than roots, bulbs, or tubers; fruits, fresh or green; hides or pelts, green; household goods, not crated, wrapped, nor boxed; jewelry; livestock, poultry or live animals; milk, fresh; notes; nursery stock; papier-mâché goods; perishable articles of any class or description; scientific instruments; stamps, postage or revenue (not affixed to package); tankage; valuable papers of any kind; vegetables, fresh or green; vehicles, motor; wire goods or wire works, n.o.i. rated higher than first class in N. M. F. C. (East). The rates named on page 8 of this tariff will not apply on the following articles. To ascertain the rates on these articles, apply the percentages shown in this item after each article of the rates shown on page 8 as calculated under Item 30.

25	Article	Percentage (see item 30)
	Aluminum articles, n. o. i., in barrels, boxes, cartons, or crates, not nested nor flat.	200
	Automobile bodies, freight n. o. i., or suburban (combination passenger and freight bodies), s. u. or partly k. d. in boxes or crates. Height of packages—	
	Over 54 inches, actual weight but not less than 1,000 pounds each, l. t. l.	400
	Over 44 inches, but not over 54 inches, actual weight but not less than 1,000 pounds each, l. t. l.	300
	Over 34 inches but not over 44 inches, l. t. l.	200
	Not over 34 inches, l. t. l.	150
	Automobile seat cabs, motortruck, s. u. or partly k. d. in boxes or crates. Height of packages—	
	Over 54 inches, l. t. l.	400
	Over 44 inches, but not over 54 inches, l. t. l.	300
	Over 34 inches, but not over 44 inches, l. t. l.	200
	Not over 34 inches, l. t. l.	150
	Baskets or hampers, n. o. i.—	
	Nested	200
	Not nested	400
	Boats	400
	Bodies, dumping steel—	
	Without dumping device	150
	With dumping device	125

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350		
20	Boxes, other than iron or steel, s. u., nested or not nested:	
	Under 10 united inches, length, width, and depth added	200
	10 united inches, but not exceeding 15 united inches, length, width and depth added	300
	Exceeding 15 united inches, length, width and depth added	400
	Cages, bird or animal, s. u.	400
	Cans or containers, empty, n. o. i., paper, pulpboard, or fibreboard, with fibreboard, paper, or pulpboard tops or bottoms, or with metal tops or bottoms; s. u., not nested—	
	Not exceeding 15 united inches, length, width and depth added. (See note)	200
	Exceeding 15 united inches	400
	NOTE.—To obtain diameter of a cylindrical can, add the depth and twice the greatest diameter.	
	Cans or containers, sheet iron, tin, or steel, not nested, loose or in packages. Boxes, n. o. i., cans or boxes, cracker, cans n. o. i., including jacketed cans; pails (buckets) n. o. i., not enameled—	
	Liquid capacity exceeding 1 pint but not exceed 2 quarts	200
	Liquid capacity not exceeding 1 pint	150
	Liquid capacity exceeding 2 quarts	400
	Tubs, sheet-iron, steel, or wooden, not nested, loose or in packages—	
	Liquid capacity 2 quarts or less	200
	Liquid capacity exceeding 2 quarts	400
	Culverts, and/or pipe, plate; sheet or skelp—	
	12 inches or less in diameter, 16 gauge or thicker	150
	Over 12 inches in diameter, 16 gauge or thicker	200
	Culverts, wooden—	
	12 inches or less in diameter	150
	Over 12 inches in diameter	200
	Drums, fibreboard, wooden, or pulpboard	400
	Drums, musical instrument	400
	Emigrants movables	500
	Feathers	500
	Filters, glass wool or mineral rock, n. o. i.	400
	Flour, carbon, n. o. i., other than in paper bags packed in boxes or cartons, gas black (carbon gas black), filtered or electrostatically separated, granulated, lamp black; or vegetable black, blacks, dry, n. o. i., l. t. l., other than in paper bags packed in boxes or cartons	200
	Frames or hull, boat, canoe, or launch	500
	Glassware, rated higher than 1st class	200
	Hats, straw or paper, in packages	300
	Ice cream cones and dishes, edible, n. o. i., in packages	200
	Lamp shades, in barrels, boxes or crates	150
	Reflectors other than metal, in barrels boxes or crates.	
	Lamp standards or electric lamps and shades combined, bamboo, cane fibre, grass rattan, reed or willow, with or without iron or wood reinforcements	150
	Lamp standards, electric or gas, portable, n. o. i., without shades, in barrels, boxes or crates.	

Article	Percentage (see item 30)
Millinery or millinery goods	300
Models	500
Neon electric signs, s. u. or k. d., in boxes or crates	400
Pipe or pipe elbows, furnace or stove, iron, steel, or tin, side seams closed:	
Nested	300
Not nested	400
Rakes, wooden, other than hand	400
Tanks—	
6 feet or less in length, U. S. gauge No. 9 or thinner	150
Over 6 feet in length, thicker than U. S. gauge No. 9	150
Over 6 feet in length, U. S. gauge No. 9 or thinner	200
Tanks, septic	200
Vehicles, children, s. u.	150
Ventilators and/or ventilator bases, chimney or roof, n. o. i.	300

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Shipments picked up at one time at the premises of one consignor for transportation hereunder to one reforwarding station shall be rated as one shipment; shipments tendered at one time at one distributing station for transportation hereunder and delivery to store door of one consignee at one time shall be rated as one shipment.

Where the rate named in this tariff is (see page 8)—	Table of percentages referred to in item 20 (all rates are in cents per 100 pounds)—the percentage rates referred to in item 20 shall be as follows—					
	125	150	200	300	400	500
25	31	38	50	75	100	125
26	33	39	52	78	104	130
27	34	41	54	81	108	135
28	35	42	56	84	112	140
29	36	44	57	87	116	145
30	38	45	60	90	120	150
31	39	47	62	93	124	155
32	40	48	64	96	128	160
33	41	50	66	99	132	165
34	43	51	68	102	136	170
35	44	53	70	105	140	175
36	45	54	72	108	144	180
37	46	56	74	111	148	185
38	48	57	76	114	152	190
39	49	59	78	117	156	195
40	50	60	80	120	160	200

Rates in cents per 100 pounds

Between Chicago, Illinois, and points in Wisconsin	Rate	Minimum charge per shipment	Between Chicago, Illinois, and points in Wisconsin—Continued	Rate	Minimum charge per shipment
Appleton	40	40 cents	Milwaukee (see Note 2)	30	35 cents
Combined Locks	40	40 cents	Neenah	40	40 cents
Cudahy (see Note 2)	30	35 cents	Oshkosh (see Note 1)	40	40 cents
DePere	40	40 cents	Racine (see Note 3)	30	30 cents
Fond du Lac	40	40 cents	St. Francis (see Note 2)	30	35 cents
Fox Point	30	35 cents	Sheboygan	35	40 cents
Green Bay	40	40 cents	Shorewood (see Note 2)	30	35 cents
Kaukauna	40	40 cents	South Milwaukee (see Note 2)	30	35 cents
Kenosha	25	30 cents	Two Rivers	40	40 cents
Kimberly	40	40 cents	Wauwatosa (see Note 2)	30	35 cents
Kohler	40	40 cents	West Allis (see Note 2)	30	35 cents
Little Chute	40	40 cents	West Milwaukee (see Note 2)	30	35 cents
Manitowoc	40	40 cents	White Fish Bay (see Note 2)	30	35 cents
Menasha	40	40 cents			

NOTE.—Rates on axles and axle parts from Oshkosh, Wisconsin, to Chicago, Illinois, will be 35 cents per 100 pounds, minimum charge 40 cents.

NOTE 2.—On shipments delivered to one carrier in one day for loading on one vehicle consigned to one consignee for one delivery from various shippers or shipments from one point picked up at one time in one day for loading on one vehicle for delivery to various consignees where aggregate weight is 10,000 pounds, rate will be 25 cents per 100 pounds. Where aggregate weight is 20,000 pounds, rate will be 20 cents per 100 pounds.

NOTE 3.—Rate of 20 cents per 100 pounds applies on automobile jacks, mounted and not mounted, and wrenches, with or without attachments.

Rate on the following commodities will be 24 cents per 100 pounds: Floor wax in metal cans, liquid floor wax in glass, automobile wax in metal cans, liquid furniture polish in metal cans, liquid furniture polish in glass, paint in metal cans, paint in glass, wood stain in metal cans, wood stain in glass.

Jacks, etc., Racine-Chi.—Commod. rate, 24¢—5,000; 19¢—10,000.

[8]

352 Section 2—Truckload Proportional Rates in Cents Per 100 Pounds Applicable Between Stations Named Herein

[9]

353 TRUCKLOAD RATES IN CENTS PER 100 POUNDS, EXCEPT AS NOTED, APPLICABLE BETWEEN STATIONS NAMED HEREIN

Item No.	Application
35	Rates named in this item apply on— (a) All freight (except as otherwise noted herein), which has been transported to the origin stations named herein, as a part of a truck-load consignment or carload consignment moving under tariffs or schedules lawfully on file with the Interstate Commerce Commission, and immediately reshipped in the original package as a truckload consignment. (b) All freight (except as otherwise noted herein), which is to be transported to the destination stations named herein as a truckload consignment, and immediately reshipped in the original package, as part of a truckload consignment or carload consignment moving under tariffs or schedules lawfully on file with the Interstate Commerce Commission. (c) All freight (except as otherwise noted herein), which has been concentrated at one loading platform for transportation from the origin stations named herein to the destination stations named herein, on the same vehicle as freight described in paragraph (a) or paragraph (b) of this item. Pick-up and delivery— (a) Rates named will include one pick-up at point of origin and one delivery at destination. (b) Rates named in this item will apply only on truckload movement loaded and sealed by consignor, on vehicles capable of being sealed (seal number shall be shown on bill of lading), and unloaded by consignee. (c) On request, at Chicago, Illinois, vehicles may be stopped at one delivery station for partial unloading in transit.

TRUCKLOAD RATES IN CENTS PER 100 POUNDS, EXCEPT AS NOTED APPLICABLE BETWEEN STATIONS NAMED HEREIN—Continued

Item No.	Application
	TRUCKLOAD RATES BETWEEN CHICAGO, ILLINOIS, AND MILWAUKEE, WISCONSIN One motor vehicle having body with not less than 1,000 cubic feet of loading space, for loading not to exceed 20,000 pounds. One-way trip from or to the above-named points (for exclusive use). Rate per vehicle—$25.00. EXCESS Freight in excess of what may be loaded on the above-described vehicles delivered to carriers named herein on one day on one bill of lading or manifest will be charged for at 20 cents per 100 pounds, subject to the following: If excess loaded on one vehicle of the size described above occupied the full visible loading space of the vehicle, charges will be based on the flat vehicle rate of $25.00 per one-way trip from or to Chicago, Illinois, or Milwaukee, Wisconsin.

[10]

354 Applicable only on interstate traffic

MF-I. C. C. No. B-146—Issued in lieu of MF-I. C. C. No. B-135 rejected by the Interstate Commerce Commission

CENTRAL STATES MOTOR FREIGHT BUREAU, INC.

W. L. Meyers, Agent

Stamp here ..... date received

Motor Freight Tariff No. 64-A—Issued in lieu of Motor Freight Tariff No. 64 rejected by the Interstate Commerce Commission, for account of participating carriers named on page 2, naming proportional rates between Evansville, Indianapolis, Fort Wayne, Muncie, South Bend, Ind., and stations in Indiana (as named on pages 9 to 11). Applying on all freight of every class and description (except as otherwise noted herein) in straight or mixed shipments when such freight originates at or is destined to stations named herein when final destination or origin is located outside of the State of Indiana. Rates named herein are restricted to single line routes. Governed, except as otherwise provided herein, by the National Motor Freight Classification No. 2 (East), Agent C. F. Jackson's MF-I. C. C. No. 4, supplements to or successive issues thereof. Issued December 11, 1937. Effective January 15, 1938. Issued by W. L. Meyers, Agent, 616 So. Michigan Ave., Chicago, Ill. Communications regarding rates published herein should be addressed to the traffic officials of the participating carriers.

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PARTICIPATING CARRIERS

Carriers parties to tariff are as shown below	Under power of attorney to W. L. Meyers, Agent I. C. C. MFXA1 No.
A. & H. Truck Line, Inc., Tell City, Ind	12
Bates Motor Transport Lines, Inc., Chicago, Ill	6
Becraft Motor Express, W. R. Becraft d/b/a Kokomo, Ind	6
Bloomington, Bedford & Indianapolis Motor Freight Ray Moon d/b/a Bloomington, Ind	5
A. O. Carter Truck Line, A. O. Carter d/b/a Martinsville, Ind	4
Day's Transfer, Inc., Elkhart, Ind	39
Drake & Houk Transfer Company, S. M. Drake and E. W. Houk d/b/a Winchester, Ind	4
Eaton Transfer Company, T. H. Eaton, d/b/a Greenfield, Ind	4
Evansville & Ohio Valley Railway Company, William A. Carson, Receiver, Evansville, Indiana	9
Hargis Truck Line, Kenneth Hargis and Mathew Hargis, d/b/a Tell City, Ind	16
Hesler Transfer Co., Inc., Elwood, Ind	15
Huls Truck Service, R. A. Huls, d/b/a Jasper, Ind	6
Indianapolis & Southern Motor Express, Inc., Indianapolis, Ind	8
I. R. C. & D. Warehouse Corporation, Richmond, Ind	4
Kile's Motor Express, Wilbur T. Kile, d/b/a Batesville, Ind	9
La Fayette Indianapolis Transit Co., Inc., La Fayette, Ind	4
Lamson Brothers Transportation, Alfred J. Lamson & John H. Lamson, d/b/a Fort Wayne, Ind	11
L. B. K. & I. Transit Co., C. W. Clever, d/b/a Indianapolis, Ind	4
Lucas Motor Express, Fred J. Lucas and Martin J. Lucas, d/b/a Shelbyville, Ind	1
McClain Dray Line, Ross McClain, Sam McClain, and John McClain, d/b/a Marion, Ind	1
McDaniel Freight Lines, Incorporated, Crawfordsville, Ind	1
McNaughton Transportation Service, H. M. McNaughton, d/b/a Indianapolis, Ind	4
Madison Motor Express, J. R. Green, d/b/a Madison, Ind	4
Meadors & Allen, Inc., Salem, Ind	19
Motor Distributing Corporation, Richmond, Ind	7
Motor Express, Inc., of Indiana, Fort Wayne, Ind	2
Motor Freight Corporation, Terre Haute, Ind	17
Muncie and Indianapolis Motor Express, Floyd Bogan, d/b/a Muncie, Ind	4
North Manchester Trucking Company, H. E. Bussard & L. A. Young, d/b/a North Manchester, Ind	4
Northwestern Transit, Inc., Michigan City, Ind	12
Orr Trucking Company, Inc., Huntington, Ind	4
Phillips Truck Line, Inc., Huntingburg, Ind	4
R. & D. Motor Express, Ray R. Davis, d/b/a Muncie, Ind	4
A. F. Reisinger Transfer, A. F. Reisinger, d/b/a Evansville, Indiana	4
Schnepper Truck Line, Sylvester H. Schnepper, d/b/a Evansville, Indiana	4
Scott Truck Service, Henry Addison, d/b/a Knightstown, Ind	4
Short Line Express Company, Incorporated, Ft. Wayne, Ind	14
Smock Motor Express Company, Abraham Smock, d/b/a Indianapolis, Ind	1
Southern Transportation Co., Fred W. Schildmeier, d/b/a Columbus, Ind	1
Lawrence Turner Trucking Company, Lawrence Turner, d/b/a Lebanon, Ind	5
United Merchants Truck Lines, Inc., Greencastle, Ind	4
Wabash Valley Express Inc., Peru, Ind	15
Wagner Trucking Company, Ora Wagner, d/b/a Muncie, Ind	1
Winder and Son, Inc., Marion, Ind	4

356 Suspension notice (I. & S. docket No. M–247)

Supplement No. 1—to MF–I. C. C. No. B–146

CENTRAL STATES MOTOR FREIGHT BUREAU, INC.

W. L. Meyers, Agent

Supplement No. 1 to Motor Freight Tariff No. 64–A for account of participating carriers named on page 2 of tariff naming proportional rates between Evansville, Indianapolis, Fort Wayne, Muncie, South Bend, Ind., and stations in Indiana (as named in tariff). Applying on all freight of every class and description (except as otherwise noted herein) in straight or mixed shipments when such freight originates at or is destined to stations named in tariff when final destination or origin is located outside of the State of Indiana. Issued January 14, 1938. Issued by W. L. Meyers, Agent, 616 So. Michigan Ave., Chicago, Ill.

357 ORDER

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 14th day of January, A. D., 1938.

Investigation and suspension docket No. M–247

First Supplemental Order

Proportional Rates Between Chicago and Wis. Points

It appearing, That there has been filed with the Interstate Commerce Commission tariffs containing schedules stating new individual and joint rates and charges, and new individual and joint regulations and practices affecting such rates and charges, to become effective on the 15th day of January, 1938, designated as follows:

W. L. Meyers, Agent: MF–I. C. C. No. B–146;

It is ordered, That the Commission upon its own motion, without formal pleading, enter upon a hearing concerning the lawfulness of the rates, charges, regulations and practices stated in the said schedules contained in said tariffs;

It further appearing, That said schedules make certain reductions and changes in rates for the transportation of carious commodities in interstate and foreign commerce and the rights and interests of the public appearing to be injuriously affected thereby, and it being the opinion of the Commission that the effective date of the said schedules contained in said tariffs should be postponed pending said hearing and decision thereon;

It is further ordered, That the operation of all said schedules contained in said tariffs be suspended, and that the use of the

rates, charges, regulations and practices therein stated be deferred upon interstate and foreign commerce until the 1st day of March, 1938, unless otherwise ordered by the Commission, and no change shall be made in such rates, charges, regulations and practices during the said period of suspension unless authorized by special permission of the Commission.

It is further ordered, That the rates and charges and the regulations and practices thereby sought to be altered shall not be changed by any subsequent tariff or schedule until this investigation and suspension proceeding has been disposed of or until the period of suspension and any extension thereof has expired, unless authorized by special permission of the Commission.

It is further ordered, That a copy of this order be filed with said schedules in the office of the Interstate Commerce Commission, and that copies thereof be forthwith served upon the carriers parties to said schedules and upon Agent W. L. Meyers, and that said carriers parties to said schedules be, and they are hereby, made respondents to this proceeding.

It further appearing, That the above-entitled matter is one which the Commission is authorized by the Motor Carrier Act, 1935, to refer to an examiner:

It is further ordered, That the above-entitled matter be, and it is hereby, referred to Examiner A. E. Later for hearing and for the recommendation of an appropriate order thereon, to be accompanied by the reasons therefor;

It is further ordered, That this matter be assigned for hearing before Examiner A. E. Later on the 1st day of February, A. D., 1938, at 10:00 o'clock A. M. (Standard Time), at the Hotel Sherman, Chicago, Illinois.

And it is further ordered, That any party desiring to be notified of any change in the time or place of the said hearing (at his own expense if telegraphic notice becomes necessary), or desiring to be served with future orders and notices in this proceeding, shall advise the Bureau of Motor Carriers of the Commission, Washington, D. C., to that effect by notice which must reach the said Bureau within ten days from the date of service hereof and that the date of mailing this notice shall be considered as the time when said notice is served.

By the Commission, Division 5.

W. P. BARTEL, *Secretary.*

[SEAL]

Suspension Notice

The effective date of tariff is HEREBY SUSPENDED UNTIL MARCH 1, 1938.

[2]

Abbreviation	Explanation	Abbreviation	Explanation
¢	Cents.	N. O. I	Not otherwise indexed in National Motor Freight Classification No. 2 (East) Agent C. F. Jackson's MF-I. C. C. No. 4.
$	Dollars.		
C. O. D	Collect on Delivery.		
d/b/a	Doing business as.		
Inc	Inclusive or Incorporated.		
Ind	Indiana.		
K. D	Knocked Down.	L. C. L	Less Carload.
Lbs	Pounds.	L. T. L	Less Truck Load.
No	Number.	S. U	Set Up

EXPLANATION OF REFERENCE MARKS.

a Anderson, Ind. to Muncie, Ind.—Rate of 10 cents per 100 pounds applies on automobile parts only.

b Connersville, Ind. to Muncie, Ind.—Rate of 20 cents per 100 pounds applies on storage cabinets only.

c Greensburg, Ind. to Indianapolis, Ind.—Rate of 15 cents per 100 pounds applies on wire fencing and wire screens. Applicable on export traffic only.

d Jasper, Ind. to Indianapolis, Ind.—Rate of 40 cents per 100 pounds applies on furniture only.

e Marion, Ind. to Muncie, Ind.—Rate of 20 cents per 100 pounds applies on console radios only.

f Shelbyville, Ind. to Indianapolis, Ind.—Rate of 15 cents per 100 pounds applies on paper bags.

g Tell City, Ind. to Evansville, Ind.—Rate of 15 cents per 100 applies on shipments of hames. Rate of 15 cents per 100 pounds applies on water closet seats when destined to points in the following states: Connecticut, all points; Delaware, all points; District of Columbia, all points; Illinois, all points; Iowa, Bellevue, Bettendorf, Burlington, Clinton, Davenport, Dubuque, Fort Madison, Keokuk, Muscatine, West Burlington, West Keithsburg; Maine, all points; Maryland, all points; Massachusetts, all points; Michigan, all points in lower peninsula; Missouri, St. Louis; New Hampshire, all points; New Jersey, all points; New York, all points; Ohio, all points; Pennsylvania, all points; Rhode Island, all points; Vermont, all points; West Virginia, all points; Wisconsin, Kenosha, Milwaukee, Racine, Sheboygan, Waukesha. Rate of 25 cents per 100 pounds applies on water closet seats when destined to points other than those listed above.

h Michigan City, Ind to South Bend, Ind.—Rate of 37½ cents per 100 pounds, minimum 50 cents, applies on bicycles.

k Peru, Ind. to Fort Wayne, Ind.—Rate of 15 cents per 100 pounds applies on cast iron valves not plated.

Item	Application of rates
	Rates named herein apply on—
5	(a) "All freight," (except as otherwise provided in Item 15 which has been transported to the origin station named herein, as a part of a truck-load consigned or carload consignmen moving under tariffs on schedules lawfully on file with the Interstate Commerce Commission and immediately reshipped in the original package as an L. T. L. shipment: or
	(b) "All freight," (except as otherwise provided in Item 15 which is to be transported to the destination station named herein as an L. T. L. shipment, and immediately reshipped in the original package as part of a truck-load consignment or carload consignment moving under tariffs or schedules lawfully on file with the Interstate Commerce Commission.
	(c) For purposes of this item the origin stations referred to in paragraph (a) and the stations referred to in paragraph (b) shall be Evansville, Ft. Wayne, Indianapolis, Muncie, and South Bend, Ind.
	Pick-up and delivery—
5	(a) "All freight", (except as otherwise provided in Item 15 which has been transported to the origin station named herein, as a part of a truck-load consignment or carload consignment moving under tariffs or schedules lawfully on file with the Interstate Commerce Commission and immediately reshipped in the original package as an L. T. L. shipment: or
	(b) "All freight", (except as otherwise provided in Item 15 which is to be transported to the destination station named herein as an L. T. L. shipment, and immediately reshipped in the original package as part of a truck-load consignment or carload consignment moving under tariffs or schedules lawfully on file with the Interstate Commerce Commission.
	(c) For purposes of this item the origin stations referred to in paragraph (a) and the stations referred to in paragraph (b) shall be Evansville, Ft. Wayne, Indianapolis, Muncie, and South Bend, Ind.
	Pick-up and delivery—
10	(a) Rate includes pick-up at distributing station and one delivery at sidewalk, shipping platform, elevator grade entrance, or store door of ultimate consignee, on freight on which application of rates under Paragraph (a) of Item 5 applies.
	(b) Rate includes one pick-up at sidewalk, shipping platform, elevator grade entrance or store door of original shipper, and delivery to reforwarding station, on freight on which application of rates under Paragraph (b) of Item 5 applies.
	(c) No allowance will be made in lieu of store door delivery or pick-up.

Item	Application of rates
350	
15	Restricted articles—The following articles will not be accepted for shipment: (a) Articles made of precious metals; articles of extraordinary value; bank bills; butter; coins; corpses; commodities in bulk requiring shoveling, such as coal, sand, gravel, cinders, ore, etc.; cream, fresh; currency; deeds; documents; drafts; eggs; explosives and other dangerous articles; fertilizer; fire works, other than specified in National Motor Freight Classification No. 2, Agent C. F. Jackson's M F-I. C. C. No. 4; florist stock, other than roots, bulbs or tubers; fruits, fresh or green; hides or pelts, green; household goods, not crated, wrapped nor boxed; jewelry; livestock, poultry or live animals; milk, fresh; notes; nursery stock; perishable articles of any class or description; stamps, postage or revenue (not affixed to package); tankage; valuable papers of any kind; vegetables, fresh or green.
20	The rates named on pages 9 to 11 of this tariff will not apply on the following articles. To ascertain the rates on these articles, apply the percentages shown in this item after each article of the rates shown on page 6 as calculated under item 25.

Article	Percentage (see item No. 25)
Airplanes or parts thereof not including engines or engine parts	400
Aluminum articles, N. O. I., in barrels, boxes, cartons, or crates, not nested nor flat	200
Animals, stuffed	400
Automobile bodies, freight, N. O. I., or suburban, (combination passenger and freight bodies) S. U. or partly K. D. in boxes or crates.	
HEIGHT OF PACKAGES	
Over 54 inches, actual weight but not less than 1,000 pounds each, L. T. L.	400
Over 44 inches, but not over 54 inches, actual weight but not less than 1,000 pounds each, L. T. L.	300
Over 34 inches but not over 44 inches, L. T. L.	200
Not over 34 inches, L. T. L.	150
Automobile seat cabs, motor truck, S. U. or partly K. D. in boxes or crates.	
HEIGHT OF PACKAGES	
Over 54 inches, L. T. L.	400
Over 44 inches, but not over 54 inches, L. T. L.	300
Over 34 inches, but not over 44 inches, L. T. L.	200
Not over 34 inches, L. T. L.	150
BASKETS OR HAMPERS, N. O. I.	
Nested	200
Not nested	400
Boats	400
Bodies, dumping steel:	
Without dumping device	150
With dumping device	125
Boxes, other than iron or steel, S. U., nested or not nested:	
Under 10 united inches, length, width and depth added	200
10 united inches, but not exceeding 15 united inches, length, width and depth added	300
Exceeding 15 united inches, length, width and depth added	400
Cages, bird or animal, S. U.	400

	Article	Percentage (see item No. 25)
360		
	Cans or containers, empty, N. O. I., paper pulpboard or fibreboard, with fibreboard, paper, or pulpboard tops or bottoms, or with metal tops or bottoms; S. U., not nested:	
	Not exceeding 15 united inches, length, width, and depth added. (See Note)	200
	Exceeding 15 united inches	400
	NOTE.—To obtain diameter of a cylindrical can, add the depth and twice the greatest diameter.	
	(b) Cans or containers, sheet iron, tin or steel, not nested, loose or in packages.	
	Boxes, N. O. I., cans or boxes, Cracker, Cans N. O. I., including jacketed cans;	
	Pails, (Buckets) N. O. I., not enameled:	
	Liquid capacity exceeding 1 pint but not to exceed 2 quarts	200
	Liquid capacity not exceeding 1 pint	150
	Liquid capacity exceeding 2 quarts	400
	Tubs, sheet iron, steel or wooden, not nested, loose or in packages:	
	Liquid capacity 2 quarts or less	200
	Liquid capacity exceeding 2 quarts	400
	Culverts, and/or pipe, plate; sheet or skelp:	
	12 inches or less in diameter, 16 gauge or thicker	150
	Over 12 inches in diameter, 16 gauge or thicker	200
	Culverts, wooden:	
	12 inches or less in diameter	150
	Over 12 inches in diameter	200
	Drums, fibreboard, wooden or pulpboard	400
	Drums, musical instrument	400
	Emigrant movables	500
	Feathers	500
	Filters, glass wool, or mineral rock, N. O. I.	400
	Flour, carbon, N. O. I., other than in paper bags packed in boxes or cartons, gas black (Carbon Gas Black), filtered or electrostatically separated, granulated, lamp black, or vegetable black, blacks, dry, N. O. I., L. T. L., other than in paper bags packed in boxes or cartons	200
	Frames or hull, boat, canoe or launch	500
	Glassware, rated higher than 1st class	200
	Hats, straw or paper, in packages	300
	Ice cream cones and dishes, edible, N. O. I., in packages	200
	Lamp shades, in barrels, boxes or crates	150
	Reflectors other than metal, in barrels boxes or crates	
	Lamp standards or electric lamps and shades combined, bamboo, cane fibre, grass rattan, reed or willow, with or without iron or wood reinforcements	150
	Lamp standards, electric or gas, portable, N. O. I., without shades, in barrels, boxes or crates.	
	Millinery or millinery goods	300
	Models	500
	Neon electric signs, S. U. or K. D. in boxes or crates	400
	Pipe or pipe elbows, furnace or stove, iron, steel or tin, side seams closed:	
	Nested	300
	Not nested	400
	Rakes, wooden, other than hand	400
	Tanks, 6 feet or less in length, U. S. Gauge No. 9 or thinner	150
	Over 6 feet in length, thicker than U. S. Gauge No. 9	150
	Over 6 feet in length, U. S. Gauge No. 9 or thinner	200
	Tanks, septic	200
	Vehicles, children, S. U.	150
	Ventilators and/or ventilator bases, chimney or roof, N. O. I.	300

For explanation of abbreviations and reference marks, see page 3.

361 Percentage of applicable rates.—The following rate tables are to be used in arriving at rates where reference is made in Item 20 to "Percentage."

25 When rate is	Rate in cents per 100 lbs. Rate on percentage bases will be—						When rate is	Rate in cents per 100 lbs. Rate on percentage bases will be—					
	125%	150%	200%	300%	400%	500%		125%	150%	200%	300%	400%	500%
10	13	15	20	30	40	50	25½	32	38	51	77	102	128
10½	13	16	21	32	42	53	26	33	39	52	78	104	130
11	14	17	22	33	44	55	26½	33	40	53	80	106	123
11½	14	17	23	35	47	58	27	34	41	54	81	108	135
12	15	18	24	36	48	60	27½	34	41	55	83	110	138
12½	16	19	25	38	50	63	28	35	42	56	84	112	140
13	16	20	26	39	52	65	28½	36	43	57	86	114	143
13½	17	20	27	41	54	68	29	36	44	58	87	116	145
14	18	21	28	42	56	70	29½	37	44	59	89	118	148
14½	19	22	29	44	58	73	30	38	45	60	90	120	150
15	19	23	30	45	60	75	30½	38	46	61	92	122	153
15½	19	23	31	47	62	78	31	39	47	62	93	124	155
16	20	24	32	49	64	80	31½	39	47	63	95	126	158
16½	21	25	33	50	66	83	32	40	48	64	96	128	160
17	21	26	34	51	68	85	32½	41	49	65	98	130	163
17½	22	26	35	53	70	88	33	41	50	66	99	132	165
18	23	27	36	54	72	90	33½	42	50	67	101	134	168
18½	23	28	37	56	74	93	34	43	51	68	102	136	170
19	24	29	38	57	76	95	34½	43	52	69	104	138	173
19½	24	29	39	59	78	98	35	44	53	70	105	140	175
20	25	30	40	60	80	100	35½	44	52	71	107	142	178
20½	26	31	41	62	82	103	36	45	54	72	108	144	180
21	26	32	42	63	84	105	36½	46	55	73	110	146	183
21½	27	32	43	65	86	108	37	46	56	74	111	148	185
22	28	33	44	66	88	110	37½	47	56	75	113	150	188
22½	28	34	45	68	90	113	38	48	57	76	114	152	190
23	29	35	46	69	92	115	38½	48	58	77	116	154	193
23½	29	35	47	71	94	118	39	49	59	78	117	156	195
24	30	36	48	72	96	120	39½	49	59	79	119	158	198
24½	31	37	48	74	98	123	40	50	60	80	120	160	200
25	31	38	50	75	100	125							

30 Minimum charge—

Except as otherwise specifically provided the minimum charge for a single less than truck load (L. T. L.) shipment from one consignor to one consignee on one bill of lading shall be for one hundred pounds at the rate applicable, except that in no case shall the charge on a single shipment be less than:

25 cents when the rate is 25 cents or lower.
35 cents when the rate is 35 cents or lower but not lower than 26 cents.
50 cents when the rate exceeds 36 cents.

35 Shipments picked up at one time at the premises of one consignor for transportation here under to one reforwarding station shall be rated as one shipment; shipments tendered at one time at one distributing station for transportation hereunder and delivery to store door of one consignee at one time shall be rated as one shipment.

RULES AND REGULATIONS

Rule No.	Explanation
5	Time limit—A period of not more than forty-eight (48) hours will be allowed at any reforwarding point named in this tariff, within which time limit shipments to be reforwarded under the provisions of this tariff must be tendered to the carrier performing the out-bound movement from such reforwarding point.
10	Out-bound billing—The out-bound billing from Evansville, Fort Wayne, Indianapolis, Muncie, and South Bend, Ind., to any point named in this tariff must show reference to the carriers' bill of lading or manifest under which shipment reached such reforwarding point as part of a consolidated truckload consignment or carload consignment of mixed L. C. L. freight.
15	In-bound billing—The in-bound billing to Evansville, Fort Wayne, Indianapolis, Muncie, and South Bend, Ind., from any point named in this tariff, must show thereon the ultimate destination to which shipment is to be reforwarded as part of a consolidated truckload consignment or carload consignment of mixed L. C. L. freight.
20	Loading and unloading—Shipments moving under rates named in this tariff from Evansville, Ft. Wayne, Indianapolis, Muncie, and South Bend, Ind., to any point named in rates this tariff shall be "prepaid" to the carriers parties to this tariff. Shipments moving under rates named in this tariff from any point named in this tariff to Evansville, Ft. Wayne, Indianapolis, Muncie, and South Bend, Ind., shall be "collect" to the carriers parties to this tariff.

RULES AND REGULATIONS—Continued

Rule No.	Explanation
362	
25	Loading and unloading of heavy or bulky freight.—Parties tendering freight are required to load into or on truck, heavy or bulky freight for forwarding by carriers parties to this tariff and, receivers of freight are required to unload from truck heavy or bulky freight forwarded by carriers parties to this tariff, which cannot ordinarily be handled by the man operating the vehicle.
30	Impracticable operation.—Nothing in this tariff shall be construed as making it binding on carriers parties to this tariff to receive freight at, or make delivery to premises at which on account of condition of alleys, streets or highways, it is impracticable to operate vehicles.
35	Delivery.—(a) When shipment once tendered for delivery and such delivery cannot be affected through no fault of carriers parties to this tariff, notice of attempted delivery shall be sent or given consignee or party entitled to receive same by carrier's Agent in writing or as otherwise agreed to by carrier and consignee, within twenty-four hours (one day) after arrival of shipment at and billing at destination, such notice to specify point of shipment and commodity. Such notice will constitute notice of arrival. (b) When, through no fault of carrier parties to this tariff, a reasonable effort to effect delivery is first made during business hours, or a shipment cannot be delivered after tender of delivery and a re-delivery is made, a charge of ten (10c) cents per 100 pounds, with a minimum charge of twenty-five (25¢) cents shall be assessed against the ultimate consignee for subsequent delivery, plus accrued freight, storage, and other lawful charges.
40	Storage rules, regulations and charges— All nonperishable freight refused, unclaimed, and/or undelivered for any reason beyond the carrier's control will be returned to carrier's nearest terminal and thereafter will be stored at the expense of the owner and held subject to the following charges for storage. Forty-eight (48) hours (two days) free time will be allowed for the removal of freight from carrier's premises, which time will be computed from the first 7:00 A. M. after arrival of shipment at destination, or tender of delivery, Sundays and legal holidays excepted. Shipments held in or on carrier's premises in excess of free time allowed will be subject to the following storage charges per day, or at option of carrier may be sent to Public Warehouse. (See Note 1.) Foreach of the first five (5) days, 1½ cents per 100 pounds; for the sixth (6th) and each succeeding day, three (3¢) cents per 100 pounds; minimum storage charge per shipment on freight held beyond free time, five (5) days or part thereof, twenty-five (25¢) cents; six (6) days or more, fifty (50¢) cents. NOTE 1.—In addition to rate named for storage, a charge of ten (10¢) cents per 100 pounds, minimum of twenty-five (25¢) cents per shipment, will be made of extra handling of shipment sent to public warehouse.
45	Collect on delivery shipments (C. O. D.)— (a) Unless otherwise instructed in writing on each specific shipment by the consignor only cash or certified check in favor of reforwarding carrier will be accepted in settlement of C. O. D. amounts and such amount will be remitted to consignor, unless otherwise specifically instructed in writing by such consignor, only after collection of such C. O. D. amount from the consignee. (b) If such specific instructions of the consignor permit acceptance of consignees check in favor of the consignor, the carrier's responsibility thereunder shall be limited to securing and transmitting such check. (c) Consignors invoices or collection papers properly filled in, enclosed in return-addressed envelopes, must be securely attached to the shipping order (copy of Bill of Lading). (d) The provisions of this Rule apply only on shipments moving on uniform straight bills of lading; The letters "C. O. D.", and the name and address of the consignor and consignee must be plainly marked on each package with which a bill is sent to be collected on delivery "C. O. D." amount to be collected must be shown in prominent place on shipping order. (e) When two or more packages are sent by one consignor to the same consignee at the same time with separate C. O. D.'s or when one of the packages is C. O. D. and the other or others are not, such packages bearing separate C. O. D.'s must be billed as individual shipments and charges assessed accordingly. (f) C. O. D. shipments will not be accepted with the privilege of examination or trial, or bearing instructions to make partial delivery. (g) C. O. D. shipments will not be accepted or receipted for when billed to one firm or person with instructions to collect charges from another firm or person. (g) Carrier's charge for C. O. D. collections will be deducted from the amount of the shipper's invoice, unless other arrangements are specifically concurred in by shipper and consignee, and the reforwarding carrier is so instructed in writing. NOTE.—C. O. D. shipments destined to points beyond car destination of reforwarding carrier, will not be reshipped until remittance has been received at the office of the said specified carrier. (i) Check remittance of C. O. D. amounts will be made to shipper not later than ten (10) days following receipt of consignees check as provided in Paragraph (a) hereof.

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RULES AND REGULATIONS—Continued

Rule No.	Explanation
363	Exception.—C. O. D. shipments of any spirituous, vinous, malted or other fermented liquor or any compound containing any spirituous, vinous, malted or other fermented liquor fit for use for beverage purposes, will not be accepted for transportation in Interstate Commerce under this Rule, when consigned to any State, Territory or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which prohibits the delivery or sale therein of such liquor (see Section 389 of title 18, U. S. C. Criminal Code, Section 239, as amended June 25th, 1936). A charge will be made for the collection and remittance of C. O. D. amounts as follows:

Shipper's C. O. D. amount	Collection and remittance fee	Shipper's C. O. D. amount	Collection and remittance fee
Not over $5.00	$0.20	Over $450.00 and not over $500.00	$1.70
Over $5.00 and not over $10.00	.25	Over $500.00 and not over $550.00	1.85
Over $10.00 and not over $25.00	.31	Over $550.00 and not over $600.00	2.00
Over $25.00 and not over $50.00	.37	Over $600.00 and not over $650.00	2.15
Over $50.00 and not over $75.00	.45	Over $650.00 and not over $700.00	2.30
Over $75.00 and not over $100.00	.50	Over $700.00 and not over $750.00	2.45
Over $100.00 and not over $150.00	.65	Over $750.00 and not over $800.00	2.60
Over $150.00 and not over $200.00	.80	Over $800.00 and not over $850.00	2.75
Over $200.00 and not over $250.00	.95	Over $850.00 and not over $900.00	2.90
Over $250.00 and not over $300.00	1.10	Over $900.00 and not over $950.00	3.05
Over $300.00 and not over $350.00	1.25	Over $950.00 over $1,000.00	3.20
Over $350.00 and not over $400.00	1.40	Over $1,000.00 at the rate of $3.20 per $1,000.00.	
Over $400.00 and not over $450.00	1.55		

For explanation of abbreviations and reference marks, see page 3.

And the following Indiana points	Between the following Indiana points				
	Evansville	Indianapolis	Fort Wayne	Muncie	South Bend
	Rates in cents per 100 pounds				
Adams		23			
Akron		26½	23½		
Albany		25		15	
Alexandria		23		17	
Alfordsville	18				
Allisonville		20			
Amboy		26	25		
Amity		20			
Anderson		20		15	
Andersonville		23½			
Andrews		28½	21		
Angola			25		
Antiville		27			
Arcadia		20		20	
Argos		28½	24		
Arlington		20½			
Arthur	25				
Attica		25½			
Auburn			17		
Aurora		27			
Avilla			17		
Bandon	25				
Batesville		24			
Bedford		27			
Berne			27		
Bicknell		29			
Bloomfield		27			
Blooming Grove		24½			
Bloomington		23½			
Bluffton			19	21	
Boonville	17				
Bourbon		30			
Bremen		32	25		
Brazil		23			
Brookville		24½			
Brownsburg		16			
Brownstown		25			
Bruceville		28½			
Bryant		27			
Burlington		23½			
Cambridge City		30		15	
Campbellsburg		28½			
Canneiton	25				
Carmel		20		20	
Carrollton		17½			
Cedar Grove		18½			
Centerville		30		15	
Chandler	20				
Charlottsville		21			
Chesterfield		20		10	
Chesterton					20
Chrisney	25				
Churubusco			16		
Cicero		23½			
Clarks Hill		23			
Clay City		25			
Claypool		29½	22		
Clermont		16			
Clinton		25½			
Coal City		25			

And the following Indiana points	Between the following Indiana points				
	Evansville	Indianapolis	Fort Wayne	Muncie	South Bend
	Rates in cents per 100 pounds				
Colfax		23			
Columbia City			15		
Columbus		21			
Connersville		24		15	
Converse		25	25		
Corydon	30				
Covington		25			
Crawfordsville		21			
Cynthiana	17½				
Dale	22				
Daleville		20		10	
Dayton		24			
Decatur		27			
Decker	25				
Delaware		25			
Delisboro		26			
Delphi		25			
Dillsboro		25			
Dublin				15	
Dover		20½			
Dunkirk		25		15	
Dunreith		30			
Eaton		20	30	17½	
Edinburg		20			
Edwardsport		28½			
Elkhart		33			12½
Ellettsville		32			
Elnora		27			
Elrod		25½			
Elwood		20		20	
Emporia				15	
English	25				
Etna Green	28½				
Evansville		30			
Everton		24			
Ferdinand	25				
Flat				28	
Five Points		15½			
Ft. Benj. Harrison		25			
Ft. Branch	17½				
Fort Wayne		29½		30	
Fortville		18½		15	
Fowler		27			
Fountaintown		18½			
Francisco	19	32			
Frankfort		25			
Franklin		18			
Frankton		20			
Freedom		24			
Fremont			25		
French Lick	25½	29½			
Gas City				15	
Gaston				10	
Gentryville	25				
Germantown		30			
Glenwood		23			
Goshen		32	20		15
Gosport		22			
Grandview	15				
Greencastle		20			

PROPORTIONAL RATES—Continued

And the following Indiana points	Between the following Indiana points				
	Evansville	Indianapolis	Fort Wayne	Muncie	South Bend
	Rates in cents per 100 pounds				
Greenfield		20			
Greensburg		*23			
Greenwood		18			
Greentown		25			
Gwynneville		19			
Hagerstown		21		15	
Hartford City		25	15	15	
Hatfield	15				
Haubstadt	17½				
Hazelton	26				
Hillsboro		24			
Holton		25½			
Honey Creek				15	
Howe			23		
Huntertown			15		
Huntingburg	25	32			
Huntington		28½	15		
Huntsville		25			
Indiana State Farm		25			
Indiana State Reformatory		25			
Indianapolis	30		29½	20	32
Ingalls		25		28	
Jamestown			19		
Jasper	25	*32			
Jonesboro				15	
Julietta		16			
Kendallville			19		
Kingsland				30	
Knightstown		21			
Kokomo		23½	25	25	
Kyle		26			
Ladoga		20			
Lagrange			25		
La Fayette		25	20		
Lagro		26½	21		
Laketon		28½			
Lapel		20		20	
La Porte					20
Lawrence		15½			
Lawrenceburg		28			
Leavenworth	25				
Lebanon		19			
Lewisville		30		15	
Liganier			20		
Limedale		22			
Linnville	20				
Linton		25			
Lizton		18½			
Logansport		25½	25		
Loogootee	20	30			
Lyons		26½			
Macy		26½			
Madison		25			
Manchester		26			
Marklesville				15	
Marion		25	24	*15	
Martinsville		19			
Matthews				10	
Mays		23			
Mechanicsburg		21		15	

And the following Indiana points	Between the follow Indiana points				
	Evansville	Indianapolis	Fort Wayne	Muncie	South Bend
	Rates in cents per 100 pounds				
Medora		26½			
Metamora		24			
Mexico		24	24		
Michigan City					*20
Middletown				15	
Milan		25½			
Milroy		23			
Milton		32		15	
Mishawaka		32			
Mitchell		28			
Mooreshill		25½			
Morris		24			
Morristown		19			
Montgomery	20				
Monticello		27			
Montpelier			19	15	
McCordsville		18½		15	
Mt. Summit				10	
Mt. Vernon	17	40			
Mulberry		23½			
Muncie		20	30		
Nappanee		32	25		
Napoleon		24			
New Albany		29			
New Augusta		16			
Newberg		15			
Newberry		27			
New Bethel		15½			
Newcastle		30		15	
New Harmony	19				
New Palestine		16			
New Point		24			
New Ross		20½			
New Salem		23			
Newtonville	20				
Noblesville		20		20	
North Madison		25			
North Manchester		28½	20		
North Vernon		25			
Nottingham				25	
Oakland City	25	32			
Oaklandon		25		15	
Odon		27			
Oldenburg		24½			
Orland			25		
Orleans		28			
Osceola					15
Osgood		21			
Ossian			15	30	
Owensville	17½				
Paoli	30	30			
Patoka	25				
Pekin		32			
Pendleton		21		15	
Penntown		24½			
Pennville				25	
Pershing				15	
Peru		25	*24		
Petersburg	20	32			
Petroleum				25	

PROPORTIONAL RATES—Continued

And the following Indiana points	Between the following Indiana points				
	Evansville	Indianapolis	Fort Wayne	Muncie	South Bend
	Rates in cents per 100 pounds				
366 Piercetown			15		
Pierceville		25			
Pittsboro		17½			
Plainfield		22			
Plainville		29			
Pleasant Lake			25		
Pleasant View		16			
Plymouth		29½			
Portland		26		15	
Poseyville	17½				
Princeton	19	35			
Putnamville		22			
Redkey		23		15	
Reedsville		17½			
Reifsburg				25	
Richland	15				
Richmond		30		15	
Rich Valley		26½			
Roanoke			15		
Rob Roy		25			
Rochester		27			22
Rockport	15	40			
Rockville		23½			
Roll			25		
Rome City			25		
Royalton		18			
Royerton				17½	
Rushville		21			
St. Croix	25				
St. Paul		21			
Salem	29½	30			
Sanborn		28½			
Sandusky		23½			
Seymour		23			
Shannondale		21			
Shelbyville		19			
Shideler				17½	
Shirley				15	
Shoals	20	40			
Silver Lake		29½			
Southport		18			
Smartsburg		23			
South Bend		32			
Sparta		25½			
Spencer		24½			
Spiceland				15	
Straughn		30		15	
Spurgeon	20				

And the following Indiana points	Between the following Indiana points				
	Evansville	Indianapolis	Fort Wayne	Muncie	South Bend
	Rates in cents per 100 pounds				
Stilesville		25			
Sullivan		28			
Sulphur	25				
Sunman		25			
Switz City		26			
Taylorsville		21			
Tell City	25	40			
Terre Haute		25			
Thorntown		23			
Tipton		21		20	
Troy	25				
Union City				15	
Vallonia		27			
Valparaiso					30
Veedersburg		24½			
Vernon		25			
Versailles		25			
Vincennes	23½	30			
Wabash		26½	24		26½
Wakarusa		32	25		
Waldron		21			
Warsaw		30	15		
Washington	20	29½			
Waterloo			20		
Waverly			17½		
Waynesdale			15	30	
Waynetown		23½			
West Baden	25½	29½			
Westfield		20		20	
Westfork	25				
Westphalia		28½			
Whiteland		18			
Whitestown		15			
Whitesville		15			
Wilkinsburg				15	
Williamsport		26			
Williamstown		23½			
Winchester		15			
Winamac		29½			
Winona Lake			15		
Winslow	20	32			
Wolcottville			25		
Wolf Lake			25		
Worthington		25			
Yankeetown	15				
Yoder				30	
Yorktown		20		10	
Zionsville		15			

For explanation of abbreviations and reference marks, see page 3.

367 Gerard Exhibit 1

Applicable only on interstate traffic

MF–I. C. C. No. B–142—Issued in lieu of MF–I. C. C. No. B–136 rejected by the Interstate Commerce Commission

CENTRAL STATES MOTOR FREIGHT BUREAU, INC.

W. L. Meyers, Agent

Stamp here ..... date received

Motor Freight Tariff No. 65–A—Issued in lieu of Motor Freight Tariff No. 65, rejected by the Interstate Commerce Commission, for account of participating carriers named on page 2, naming proportional rates between Chicago, Ill., and stations in Illinois and Indiana (as named on page 9). Applying on all freight of every class and description (except as otherwise noted herein) in straight or mixed shipments when such freight originates at or is destined to stations named herein when final destination or origin is located outside of the States of Illinois or Wisconsin. Rates named herein are restricted to single line routes. Governed, except as otherwise provided herein, by the National Motor Freight Classification No. 2 (East), Agent C. F. Jackson's MF–I. C. C. No. 4, supplements to or successive issues thereof. Issued December 11, 1937. Effective January 15, 1938. Issued by W. L. Meyers, Agent, 616 So. Michigan Ave., Chicago, Ill. Communications regarding rates published herein should be addressed to the traffic officials of the participating carriers.

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PARTICIPATING CARRIERS

Carriers parties to tariff are as shown below	Under power of attorney to W. L. Meyers, Agent I. C. C. MFX-A1 No.
A. & A. Joliet Transportation Co., Chicago, Ill	8
Aurora Transfer Company, Aurora, Ill	4
Austgen Express & Storage Co., Chicago Heights, Ill	4
J. Bedford Motor Service, Inc., Chicago, Ill	4
Beske, A. F. Cartage Co., Chicago, Ill	2
Bowron Motor Service, L. C. Bowron, operating as, Batavia, Ill	1
Browns Express, Inc., Chicago Heights, Ill	2
Fred, Burren Transfer, Elgin, Ill	2
Chicago Belt Freight Lines, Inc., Chicago, Ill	2
Chicago Heights Trucking Co., Inc., Chicago Heights, Ill	9
Consolidated Cartage Co., Inc., Chicago, Ill	2
Consolidated Forwarding Co., Inc., St. Louis, Mo	4
Co-Ordinated Trahsport, Inc., of Illinois, Chicago, Ill	28
Corey & Evans, Inc., De Kalb, Ill	6
Crown Point Transfer Company, Henry, Walter H. & Elmer M. Heisterberg d/b/a, Crown Point, Ind	6
Cushman Motor Delivery Company, Chicago, Ill	1
Elgin Storage & Transfer Co., Elgin, Ill	37
Exon Motor Service, Libertyville, Ill	4
Ferguson Transfer & Storage, F. A. Ferguson, d/b/a, Valparaiso, Ind	5
Fox Valley Motor Service, Inc., Aurora, Ill	33
Gold Star Motor Service, Inc., Barrington, Ill	4
Hoekstra Motor Express (Not inc.), Chicago, Ill	4
Hollett Motor Service, Florence V. Hollett, d/b/a, Harvey, Ill	16
Hollister's Motor Cartage, Inc., Woodstock, Ill	4
Houdek's Motor Service, Inc., Geneva, Ill	4
Joliet Reefer Transit Line, J. R. Riley, d/b/a, Joliet, Ill	200
Joliet Warehouse and Transfer Company, Joliet, Ill	18
Kehe Motor Service, Arlington Heights, Ill	22
Krema Trucking Co., Chicago, Ill	8
Kutzler Cartage, Frank Kutzler, Jr., d/b/a, Waukegan, Ill	6
Leoni Motor Express, Chicago Heights, Ill	12
Liberty Trucking Co., Inc., Chicago, Ill	4
Martin Transfer & Storage Co., Aurora, Ill	15
Meinke & Sons, Inc., La Porte, Ind	9
Murphy Motor Express, Maywood, Ill	10
Niedert Motor Service, C. W. Niedert, d/b/a, Desplaines, Ill	4
Northern Illinois Freight Lines, Inc., Rockford, Ill	20
Northern Indiana Trucking, Inc., Chicago, Heights, Ill	7
North Shore Motor Express Co., Inc., Chicago, Ill	8
Northwestern Transit, Inc., Michigan City, Ind	12
Fred Olson & Son Motor Service, Inc., Chicago, Ill	11
Pagoria's Express Service, Inc., Chicago Heights, Ill	4
Paine Motor Express, Woodstock, Ill	5
Pennoyer Merchants Transfer Company, Chicago, Ill	4
Plumer's Motor Express, H. R. Plumer, d/b/a, Batavia, Ill	12
Rockford Motor Service, Inc., Rockford, Ill	4
Roosevelt Cartage Company, Chicago, Ill	35
Sauter-Dobson Teaming Company, Chicago Heights, Ill	5
Schiek Motor Express, Inc., Joliet, Ill	4
M. J. Seiwert Forwarding Company, Chicago, Ill	4
Service Cartage Co., Inc., Lemont, Ill	5
Short Line Express Company, Incorporated, Fort Wayne, Ind	11
The N. C. Sorensen Motor Express Co., Inc., Chicago, Ill	3
H. Strahl, Motor Service, H. Strahl, d/b/a, St. Charles, Ill	4
Tucker Freight Lines, Inc., South Bend, Ind	29
Universal Motor Service, Walter and Joseph Jankowski, d/b/a, Chicago, Ill	27
Valentine Transfer & Storage Co., Aurora, Ill	5
Webber Cartage Line, Inc., Waukegan, Ill	47
Welsh Brothers Motor Service, Matthew C. Welsh & Robert J. Welsh, d/b/a, Hammond, Ind	5
Wieringa Bros. Cartage Co., Chicago, Ill	3
Zellers Transit Company, Bert L. Zellers, d/b/a, La Porte, Ind	8

369 Suspension notice (I. & S. Docket No. M-247)

Supplement No. 1 to MF-I. C. C. No. B-142

CENTRAL STATES MOTOR FREIGHT BUREAU, INC.

W. L. Meyers, Agent

Supplement No. 1 to Motor Freight Tariff No. 65-A, for account of participating carriers named on page 2 of tariff naming proportional rates between Chicago, Ill. and stations in Illinois and Indiana (as named in tariff). Applying on all freight of every class and description (except as otherwise noted in tariff) in straight or mixed shipments when such freight originates at or is destined to stations named in tariff when final destination or origin is located outside of the States of Illinois or Wisconsin Issued January 14, 1938. Issued by W. L. Meyers, Agent, 616 So. Michigan Ave., Chicago, Ill.

370 ORDER

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 14th day of January, A. D., 1938.

Investigation and suspension Docket No. M-247

First Supplemental Order

Proportional Rates Between Chicago and Wis. Points

It appearing, That there has been filed with the Interstate Commerce Commission tariffs containing schedules starting new individual and joint rates and charges, and new individual and joint regulations and practices affecting such rates and charges, to become effective on the 15th day of January, 1938, designated as follows:

W. L. Meyers, Agent: MF-I. C. C. No. B-142;

It is ordered, That the Commission upon its own motion without formal pleading, enter upon a hearing concerning the lawfulness of the rates, charges, regulations and practices stated in the said schedules contained in said tariffs;

It further appearing, That said schedules make certain reductions and changes in rates for the transportation of various commodities in interstate and foreign commerce and the rights and interests of the public appearing to be injuriously affected thereby, and it being the opinion of the Commission that the effective date of the said schedules contained in said tariffs should be postponed pending said hearing and decision thereon;

It is further ordered, That the operation of all said schedules contained in said tariffs be suspended, and that the use of the

rates, charges, regulations and practices therein stated be deferred upon interstate and foreign commerce until the 1st day of March, 1938, unless otherwise ordered by the Commission, and no change shall be made in such rates, charges, regulations and practices during the said period of suspension unless authorized by special permission of the Commission.

It is further ordered, That the rates and charges and the regulations and practices thereby sought to be altered shall not be changed by any subsequent tariff or schedule until this investigation and suspension proceeding has been disposed of or until the period of suspension and any extension thereof has expired, unless authorized by special permission of the Commission.

It is further ordered, That a copy of this order be filed with said schedules in the office of the Interstate Commerce Commission, and that copies thereof be forthwith served upon the carriers parties to said schedules and upon Agent W. L. Meyers and that said carriers praties to said schedules be, and they are hereby, made respondents to this proceeding.

It further appearing, That the above-entitled matter is one which the Commission is authorized by the Motor Carrier Act, 1935, to refer to an examiner:

It is further ordered, That the above-entitled matter be, and is is hereby, referred to Examiner A. E. Later for hearing and for the recommendation of an appropriate order thereon, to be accompanied by the reasons therefor;

It is further ordered, That this matter be assigned for hearing before Examiner A. E. Later on the 1st day of February, A. D. 1938, at 10:00 o'clock A. M. (Standard time), at the Hotel Sherman, Chicago, Illinois.

An it is further ordered, That any party desiring to be notified of any change in the time or place of the said hearing (at the own expense if telegraphic notice becomes necessary), or desiring to be served with future orders and notices in this proceeding, shall advise the Bureau of Motor Carriers of the Commission, Washington, D. C., to that effect by notice which must reach the said Bureau within ten days from the date of service and that the date of mailing of this notice shall be considered as the time when said notice is served.

By the Commission, Division 5.

[SEAL] W. P. BARTEL, *Secretary*.

Suspension Notice

The effective date of tariff is Hereby Suspended Until March 1, 1938.

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371 EXPLANATION OF ABBREVIATIONS

Abbreviation	Explanation	Abbreviation	Explanation
¢	Cents.	No	Number.
$	Dollars.	N. O. I	Not otherwise indexed in National Motor Freight Classification No. 2, Agent C. F. Jackson's MF-I. C. C. No. 4.
C. O. D	Collect on Delivery.		
d/b/a	Doing business as.		
Inc	Inclusive or Incorporated.		
Ill	Illinois.		
K. D	Knocked Down.	L. T. L	Less Truck Load.
N. M. F. C	National Motor Freight Classification, as described on title page.	S. U	Set Up.
		Wis	Wisconsin.

EXPLANATION OF REFERENCE MARKS

Reference mark	Explanation
♀	Denotes reduction.
◆	Denotes increase.
▲	Denotes changes, the result of which is neither an increase nor a reduction.

Note No.	Explanation of notes
5	From Aurora, Illinois.—Rate of 30 cents per 100 pounds applies on steel furniture, set up.
10	From Batavia, Illinois.—Rate of 15 cents per 100 pounds applies on drugs and toilet preparations.
15	From Chicago Heights, Illinois.—Rate of 30 cents per 100 pounds applies on steel furniture, set-up.
20	From Coal City, Illinois.—Rate of 20 cents per 100 pounds applies on wall paper.
25	From De Kalb, Illinois.—Rate of 35 cents per 100 pounds applies on pianos and piano accordions.
30	From Des Plaines, Illinois.—Rate of 20 cents per 100 pounds applies on electrical appliances.
35	From Geneva, Illinois.—Rate of 30 cents per 100 pounds applies on steel furniture, set-up.
40	From Hammond, Indiana.—Rate of 20 cents per 100 pounds applies on toys and velocipedes.
45	From Joliet, Illinois.—Rate of 15 cents per 100 pounds applies on wall paper. Rate of 30 cents per 100 pounds applies on machinery, set-up.
50	From Kankakee, Illinois.—Rate of 20 cents per 100 pounds applies on paints.
55	From La Grange, Illinois.—Rate of 25 cents per 100 pounds applies on aluminum ware.
60	From La Porte, Indiana.—Except as otherwise provided, rate of 25 cents per 100 pounds applies on all freight destined to points east of the Illinois-Indiana State line.
65	From Lemont, Illinois.—Rate of 35 cents per 100 pounds applies on aluminum ware, not nested. Rate of 30 cents per 100 pounds applies on aluminum ware, nested. Rate of 27½ cents per 100 pounds applies on insulated jugs.
70	From Manteno, Illinois.—Rate of 50 cents per 100 pounds applies on furniture, set-up.
75	From Melrose Park, Illinois.—Rate of 20 cents per 100 pounds applies on milk cans.
80	From Michigan City, Indiana.—Except as otherwise provided, rate of 25 cents per 100 pounds applies on all freight destined to points east of the Illinois-Indiana-State line. Rate of 25 cents per 100 pounds applies on cough drops. Rate of 38 cents per 100 pounds applies on bicycles. Rate of 45 cents per 100 pounds applies on curled hair. Rate of 50 cents per 100 pounds applies on hats, not nested.
85	From North Chicago, Illinois.—Rate of 15 cents per 100 pounds applies on candy.

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Note No.	Explanation of notes
90	From St. Charles, Illinois.—Rate of 35 cents per 100 pounds applies on musical instruments. Rate of 30 cents per 100 pounds applies on steel furniture, set-up.
95	From Sycamore, Illinois.—Rate of 18 cents per 100 pounds applies on copper wire and/or cable when destined to points in the states of Arizona, California, Idaho, Montana, Nevada, Oregon, Utah and Washington. Rate of 17½ cents per 100 pounds applies on copper wire and/or cable when destined to all other points.
100	From Waukegan, Illinois.—Rate of 18 cents per 100 pounds applies on the following commodities: asbestos or magnesia insulating materials in forms other than solid flat blocks or sheets, cartons test 200 pounds per square inch, Mullen or Cady test; asbestos or magnesia insulating material in solid flat blocks or sheets; asbestos building, paper plain; asbestos building or roofing paper, saturated; asbestos cement; asbestos gaskets; asbestos hard corrugated roofing; asbestos lumber, not ornamented, polished or shaped; asbestos millboard; asbestos packing compound; asbestos ridge roll; asbestos shingles, hard (art roofing slate); asphalt; asphalt composition flooring tile; asphalt flooring compound (solid) mastic blocks; asphalt shingles; brake blocks, asbestos; brake lining, N. O. I.; brake lining fabric; building or roofing paper other than asbestos, plain; building sheet metal work, steel, N. O. I. primed; concrete conduits and connections (for underground work); displays advertising, store or window, K. D.; facingtile (composition N. O. I.); floor tile cement, liquid; high temperature bonding mortar; iron bolts & nuts; iron ceiling clips, N. O. I.; iron tees, N. O. I.; Magnesia cement; mineral wool; nails, copper, not plated; nails, galvanized iron; packing, vegetable fibre; paste, flour, dry; prepared roofing; roofing cement; tin strips with fastepers (metal fasteners); wallboard (pulpboard or fibreboard).
105	From Zion, Illinois.—Rate of 15 cents per 100 pounds applies on confectionery and bakery goods.

Item	Application of rates
5	Rates named herein apply on— (a) "All freight," (except as otherwise provided in Item 15), which has been transported to the origin station named herein, as a part of a truckload consignment or carload consignment moving under tariffs or schedules lawfully on file with the Interstate Commerce Commission and immediately reshipped in the original package as an L. T. L. shipment; or (b) "All freight," (except as otherwise provided in Item 15), which is to be transported to the destination station named herein as an L. T. L. shipment, and immediately reshipped in the original package as part of a truckload consignment or carload consignment moving under tariffs or schedules lawfully on file with the Interstate Commerce Commission. (c) For the purpose of this Item, the origin station referred to in Paragraph (a) and the destination station referred to in Paragraph (b) shall be Chicago, Ill.
10	Pick-up and delivery— (a) Rate includes pick-up at distributing station and one delivery at sidewalk, shipping platform, elevator grade entrance, or at store door of ultimate consignee, on freight on which application of rates under Paragraph (a) of Item 5 applies. (b) Rate includes one pick-up at sidewalk, shipping platform, elevator grade entrance or store door of original shipper, and delivery to reforwarding station, on freight on which application of rates under Paragraph (b) of Item 5 applies. (c) No allowance will be made in lieu of store door delivery or pick-up.

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20	Article	Percentage (see item 25)
373 15	Restricted articles.—The following articles will not be accepted for shipment: Airplanes, or parts thereof, not including engine or engine parts; animals, stuffed; articles made of precious metals; articles of extraordinary value; bank bills; boats; butter; coins; corpses; commodities in bulk requiring shoveling, such as coal, sand, gravel, cinders, ore, etc; cream, fresh; currency; deeds; documents; drafts; eggs; explosives and other dangerous articles; fertilizer; fire works, other than specified in N. M. F. C.; florist stock, other than roots, bulbs, or tubers; fruits, fresh or green; hides or pelts, green; household goods, not crated, wrapped nor boxed, jewelry; livestock, poultry or live animals; milk, fresh; notes; nursery stock; paper mache goods; perishable articles of any class or description; scientific instruments; stamps, postage or revenue (not affixed to package); tankage; valuable papers of any kind; vegetable, fresh or green; vehicles, motor; wire goods or wire works, N. O. I. rated higher than first class in N. M. F. C. (East). The 20 rates named on page 9 of this tariff will not apply on the following articles. To ascertain the rates on these articles, apply the percentages shown in this item after each article of the rates shown on page 6 as caculated under item 25.	

Article	Percentage (see item 25)
Aluminum articles, N. O. I., in barrels, boxes, cartons, or crates, not nested nor flat	200
Automobile bodies, freight N. O. I., or suburban, (Combination passenger and freight bodies) S. U. or partly K. D. in boxes or crates.	
HEIGHT OF PACKAGES	
Over 54 inches, actual weight but not less than 1,000 pounds each, L. T. L	400
Over 44 inches, but not over 54 inches, actual weight but not less than 1,000 pounds each, L. T. L	300
Over 34 inches but not over 44 inches, L. T. L	200
Not over 34 inches, L. T. L	150
Automobile seat cabs, Motor Truck, S. U. or partly K. D. in boxes or crates.	
HEIGHT OF PACKAGES	
Over 54 inches, L. T. L	400
Over 44 inches, but not over 54 inches, L. T. L	300
Over 34 inches, but not over 44 inches, L. T. L	200
Not over 34 inches, L. T. L	150
BASKETS OR HAMPERS, N. O. I.	
Nested	200
Not nested	400
Boats	400
Bodies, dumping steel:	
Without dumping device	150
With dumping device	125
Boxes, other than iron or steel, S. U., nested or not nested:	
Under 10 united inches, length, Width and Depth added	200
10 united inches, but not exceeding 15 united inches, length, width and depth added	300
Exceeding 15 united inches, length, width and depth added	400
Cages, bird or animal, S. U	400
Cans or containers, empty, N. O. I., paper pulpboard or fibreboard, with fibreboard, paper or pulpboard tops or bottoms, or with metal tops or bottoms; S. U., not nested:	
Not exceeding 15 united inches, length, width and depth added. (See note)	200
Exceeding 15 united inches	400
NOTE.—To obtain diameter of a cylindrical can, add the depth and twice the greatest diameter.	
Cans or containers, sheet iron, tin or steel, not nested, loose or in packages. Boxes, N. O. I., cans or boxes, Cracker, Cans N. O. I.; including jacketed cans; Pails, (Buckets) N. O. I., not nameled:	
Liquid capacity exceeding 1 pint but not exceeding 2 quarts	200
Liquid capacity not exceeding 1 pint	150
Liquid capacity exceeding 2 quarts	400
Tubs, sheet iron, steel or wooden, not nested, loose or in packages:	
Liquid capacity 2 quarts or less	200
Liquid capacity exceeding 2 quarts	400
Culverts, and/or pipe, plate, sheet or skelp:	
12 inches or less in diameter, 16 gauge or thicker	150
Over 12 inches in diameter, 16 gauge or thicker	200
Culverts, wooden:	
12 inches or less in diameter	150
Over 12 inches in diameter	200

	Article	Percentage (See item 25)
	Drums, fibreboard, wooden or pulpboard	400
	Drums, Musical Instrument	400
	Emigrant movables	500
	Feathers	500
	Filters, glass wool or mineral rock, N. O. I.	400
	Flour, carbon, N. O. I., other than in paper bags packed in boxes or cartons, gas black, (carbon gas black), filtered or electrostatically separated, granulated, lamp black, or vegetable black, blacks, dry, N. O. I., L. T. L., other than in paper bags packed in boxes or cartons	200
	Frames or hull, boat, canoe or launch	500
	Glassware, rated higher than 1st class	200
	Hats, straw or paper, in packages	300
	Ice cream cones and dishes, edible, N. O. I., in packages	200
	Lamp shades, in barrels, boxes or crates	150
	Reflectors other than metal, in barrels, boxes or crates:	
	Lamp standards or electric lamps and shades combined, bamboo, cane, fibre, grass rattan, reed or willow, with or without iron or wood reinforcements	150
	Lamp standards, electric or gas, portable, N. O. I., without shades, in barrels, boxes or crates.	
	Millinery or millinery goods	300
	Models	500
	Neon electric signs, S. U. or K.D. in boxes or crates	400
	Models	500
	Neon electric signs, S. U. or K.D. in boxes or crates	400
	Pipe or pipe elbows, furnace or stove, iron, steel or tin, side seams closed:	
	Nested	300
	Not ne[illegible]	400
	Rakes, W[illegible]n, other than hand	400
	Tanks, 6 feet or less in length, U. S. Gauge No. 9 or thinner	150
	Over 6 feet in length, thicker than U. S. gauge No. 9	150
	Over 6 feet in length, U. S. gauge No. 9 or thinner	200
	Tanks, septic	200
	Vehicles, children, S. U	150
	Ventilators and/or ventilator bases, chimney or roof, N. O. I.	300

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Where the rate named in this tariff is (see page 9)	Table of percentages referred to in item 20 all rates are in cents per 100 pounds					
	The percentage rates referred to in item 20 shall be as follows:					
	125	150	200	300	400	500
15	19	23	30	45	60	75
16	20	24	32	48	64	80
17	21	26	34	51	68	85
18	23	27	36	54	72	90
19	24	29	38	57	76	95
20	25	30	40	60	80	100
21	26	32	42	63	84	105
22	28	33	44	66	88	110
23	29	35	46	69	92	115
24	30	36	48	72	96	120
25	31	38	50	75	100	125
26	33	39	52	78	104	130
27	34	41	54	81	108	135
28	35	42	56	84	112	140
29	36	44	57	87	116	145
30	38	45	60	90	120	150
31	39	47	62	93	124	155
32	40	48	64	96	128	160
33	41	50	66	99	132	165
34	43	51	68	102	136	170
35	44	53	70	105	140	175
36	45	54	72	108	144	180
37	46	56	74	111	148	185
38	48	57	76	114	152	190
39	49	59	78	117	156	195
40	50	60	80	120	160	200

Rule No.	Explanation
5	Time limit—A period of not more than forty-eight (48) hours will be allowed at any reforwarding point named in this tariff, within which time limit shipments to be reforwarded under the provisions of this tariff must be tendered to the carrier performing the outbound movement from such reforwarding point.
10	Outbound billing—The outbound billing from Chicago, Ill., to any point named in this tariff, must show reference to the carriers' bill of lading or manifest under which shipment reached such reforwarding point as part of a truckload consignment or carload consignment.
15	Inbound billing—The inbound billing to Chicago, Ill., from any point named in this tariff, must show thereon the ultimate destination to which shipment is to be reforwarded as part of a truckload consignment or carload consignment.
20	Collection of freight charges—Shipments moving under rates named in this tariff from Chicago, Ill., to any point named in this tariff shall be "prepaid" to the carriers parties to this tariff. Shipments moving under rates named in this tariff from any point named in this tariff to Chicago, Ill., shall be "collect" to the carriers parties to this Tariff.
25	Loading and unloading of heavy or bulky freight—Parties tendering freight are required to load into or on truck, heavy or bulky freight for forwarding by carriers parties to this tariff and receivers of freight are required to unload from truck heavy or bulky freight forwarded by carriers parties to this tariff, which cannot ordinarily be handled by the man operating the vehicle.
30	Impracticable operation—Nothing in this tariff shall be construed as making it binding on carriers parties to this tariff to receive freight at, or make delivery to premises at which on account of condition of alleys, streets or highways, it is impracticable to operate vehicles.
35	Delivery—(a) When shipment once tendered for delivery and such delivery cannot be affected through no fault of carriers parties to this tariff, notice of attempted delivery shall be sent or given consignee or party entitled to receive same by carrier's Agent in writing or as otherwise agreed to by carrier and consignee, within twenty-four hours (one day) after arrival of shipment and billing at destination, such notice to specify point of shipment and commodity. Such notice will constitute notice of arrival.
	(b) When, through no fault of carrier parties to this tariff, a reasonable effort to effect delivery is first made during business hours, or a shipment cannot be delivered after tender of delivery and a re-delivery is made, a charge of ten (10¢) cents per 100 pounds, with a minimum charge of twenty-five (25¢) cents shall be assessed against the ultimate consignee for subsequent delivery, plus accrued freight, storage and other lawful charges.
40	Storage rules, regulations and charges—All non-perishable freight refused, unclaimed, and or undelivered for any reason beyond the carrier's control will be returned to carrier's nearest terminal and thereafter will be stored at the expense of the owner and held subject to the following charges for storage.
	Forty-eight (48) hours (two days) free time will be allowed for the removal of freight from carrier's premises, which time will be computed from the first 7:00 A. M. after arrival of shipment at destination, or tender of delivery, Sundays and legal holidays excepted.
	Shipments held in or on carrier's premises in excess of free time allowed will be subject to the following storage charges per day, or at option of carrier may be sent to Public Warehouse (See Note 1.)
	For each of the first five (5) days, 1½ cents per 100 pounds. For the sixth (6th) and each succeeding day, three (3¢) cents per 100 pounds; minimum storage charge per shipment on freight held beyond free time, five (5) days or part thereof, twenty-five (25¢) cents; six (6) days or more, fifty (50¢) cents.
	NOTE 1.—In addition to rate named for storage, a charge of ten (10¢) cents per 100 pounds, minimum of twenty-five (25¢) per shipment, will be made for extra handling of shipment sent to public warehouse.
45	Collect on delivery shipments (C. O. D.)—(a) Unless otherwise instructed in writing on each specific shipment by the consignor only cash or certified check in favor or reforwarding carrier will be accepted in settlement of C. O. D. amounts and such amount will be remitted to consignor, unless otherwise specifically instructed in writing by such consignor, only after collection of such C. O. D. amount from the consignee.
	(b) If such specific instructions of the consignor permit acceptance of consignees check in favor of the consignor, the carrier's responsibility thereunder shall be limited to securing and transmitting such check.
	(c) Consignors invoices or collection papers properly filled in, enclosed in return-addressed envelopes, must be securely attached to the shipping order (copy of Bill of Lading).
	(d) The provisions of this Rule apply only on shipments moving on uniform straight bills of lading;
	The Letters "C. O. D.", and the name and address of the consignor and consignee must be plainly marked on each package with which a bill is sent to be collected on delivery. "C. O. D." amount to be collected must be shown in prominent place on shipping order.

RULES AND REGULATIONS—Continued

Rule No.	Explanation
376	(e) When two or more packages are sent by one consignor to the same consignee at the same time with separate C. O. D.'s or when one of the packages is C. O. D. and the other or others are not, such packages bearing separate C. O. D.'s must be billed as individual shipments and charges assessed accordingly. (f) C. O. D. shipments will not be accepted with the privilege of examination or trial, or bearing instructions to make partial delivery. (g) C. O. D. shipments will not be accepted or receipted for when billed to one firm or person with instructions to collect charges from another firm or person. (h) Carrier's charge for C. O. D. collections will be deducted from the amount of the shipper's invoice, unless other arrangements are specifically concurred in by shipper and consignee, and the reforwarding carrier is so instructed in writing. NOTE.—C. O. D. shipments destined to points beyond car destination of reforwarding carrier, will not be reshipped until remittance has been received at the office of the said specified carrier. (i) Check remittance of C. O. D. amounts will be made to shipper not later than ten (10) days following receipt of consignees check as provided in Paragraph (a) hereof. Exception: C. O. D. shipments of any spirituous, vinous, malted or other fermented liquor or any compound containing any spirituous, vinous, malted or other fermented liquor fit for use for beverage purposes, will not be accepted for transportation in Interstate Commerce under this Rule, when consigned to any State, Territory or District of the United States, or place non-contiguous to but subject to the jurisdiction thereof, which prohibits the delivery or sale therein of such liquor (see Section 389 of title 18, U. S. C. Criminal Code, section 239, as amended June 25th, 1936). A charge will be made for the collection and remittance of C. O. D. amounts as follows:

Shipper's C. O. D. amount	Collection and remittance fee	Shipper's C. O. D. amount	Collection and remittance fee
Not Over $5.00	$0.20	Over $450.00 and not over $500.00	$1.70
Over $5.00 and not over $10.00	.25	Over $500.00 and not over $550.00	1.85
Over $10.00 and not over $25.00	.31	Over $550.00 and not over $600.00	2.00
Over $25.00 and not over $50.00	.37	Over $600.00 and not over $650.00	2.15
Over $50.00 and not over $75.00	.45	Over $650.00 and not over $700.00	2.30
Over $75.00 and not over $100.00	.50	Over $700.00 and not over $750.00	2.45
Over $100.00 and not over $150.00	.65	Over $750.00 and not over $800.00	2.60
Over $150.00 and not over $200.00	.80	Over $800.00 and not over $850.00	2.75
Over $200.00 and not over $250.00	.95	Over $850.00 and not over $900.00	2.90
Over $250.00 and not over $300.00	1.10	Over $900.00 and not over $950.00	3.05
Over $300.00 and not over $350.00	1.25	Over $950.00 and not over $1,000.00	3.20
Over $350.00 and not over $400.00	1.40	Over $1,000.00 a rate of $3.20 per $1,000.00.	
Over $400.00 and not over $450.00	1.55		

For explanation of abbreviations, see page 3.

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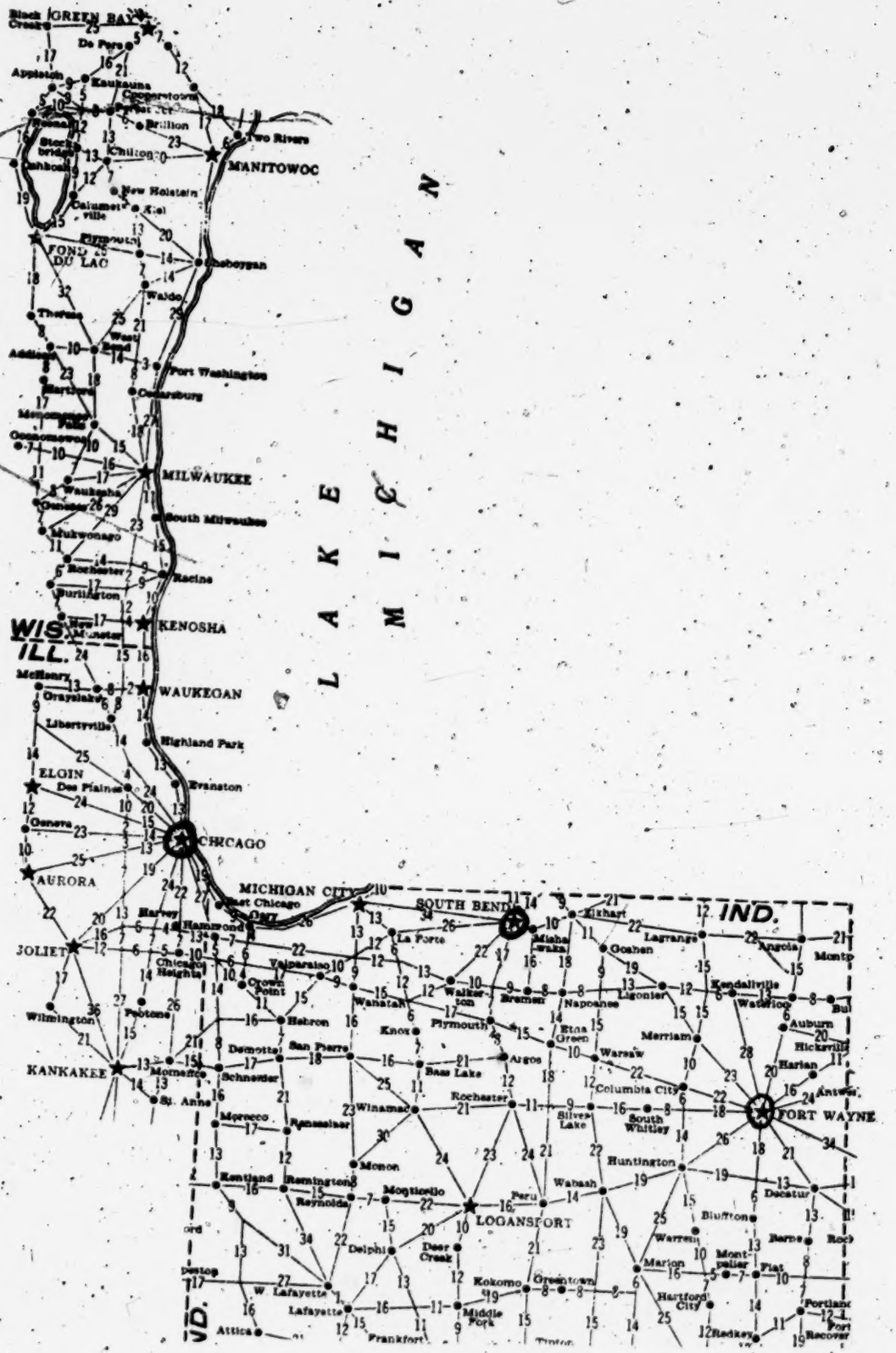
377 PROPORTIONAL RATES IN CENTS PER 100 POUNDS, MINIMUM CHARGE 35 CENTS BETWEEN CHICAGO, ILL. AND THE FOLLOWING POINTS IN ILLINOIS AND INDIANA

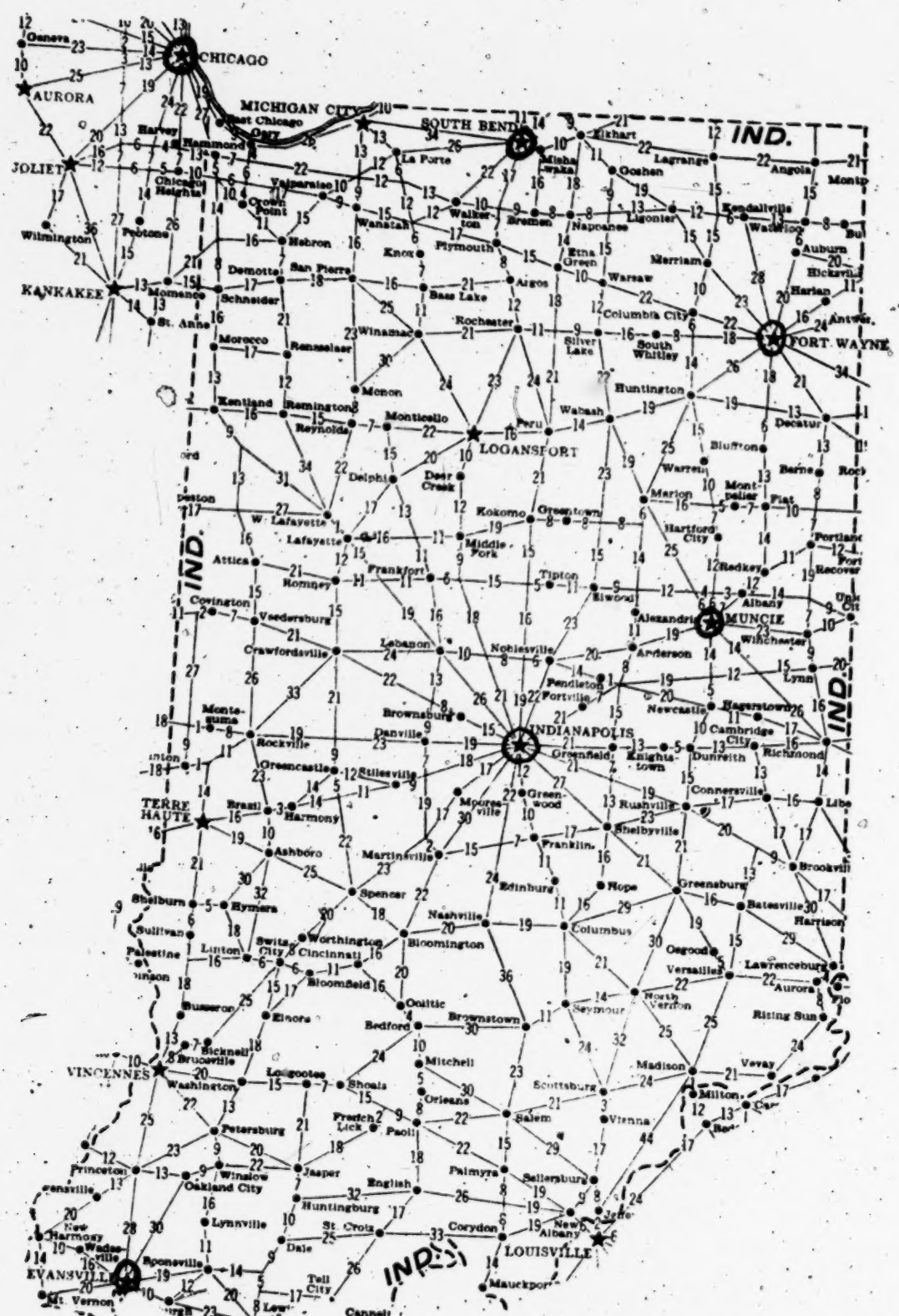
	Rate		Rate		Rate
Addison, Ill	20	Belmont, Ill	18	Carpentersville, Ill	21
Aetna, Ind	19	Belmont Heights, Ill	20	Cary, Ill	20
Ainsworth, Ind	20	Bensenville, Ill	17	Cedar Lake, Ind	23
Alden, Ill	25	Berkeley, Ill	17	Channel Lake, Ill	23
Algonquin, Ill	21	Bloomingdale, Ill	18	Chesterton, Ind	23
Antioch, Ill	23	Blue Island, Ill	15	Chicago Heights, Ill. (Note 15)	15
Arlington Heights, Ill	18	Bourbonnais, Ill	23	Clarendon Hills, Ill	17
Argo, Ill	15	Bradley, Ill	23	Cloverdale, Ill	19
Aurora, Ill. (Note 5)	20	Braidwood, Ill	24	Coal City, Ill (Note 20)	23
Axmour, Ind	20	Bristol, Ill	23	Congress Park, Ill	15
Bannockburn, Ill	18	Broadview, Ill	15	Cook, Ind	23
Barrington, Ill	20	Brookfield, Ill	15	Creston, Ind	23
Bartlett, Ill	19	Buffington, Ind	20	Crete, Ill	15
Batavia, Ill. (Note 10)	20	Burnham, Ill	15	Crown Point, Ind	20
Beecher, Ill	20	Burr Oak, Ill	17		
Bellwood, Ill	15	Calumet City, Ill	15		

PROPORTIONAL RATES IN CENTS PER 200 POUNDS, MINIMUM CHARGE 35 CENTS BETWEEN CHICAGO ILL. AND THE FOLLOWING POINTS IN ILLINOIS AND INDIANA—Continued

	Rate		Rate		Rate
Crystal Lake, Ill	21	La Grange, Ill. (Note 55)	15	Plano, Ill	20
Deep River, Ind	25	Lake Bluff, Ill	19	Posen, Ill	17
Deerfield, Ill	18	Lake Forest, Ill	19	Prairie View, Ill	20
DeKalb, Ill. (Note 25)	25	La Porte, Ind. (Note 60)	30	Ravinia, Ill	18
Des Plaines, Ill. (Note 30)	15	Lake Villa, Ill	22	Richmond, Ill	23
Dixmoor, Ill	17	Lake Zurich, Ill	20	Ridgefield, Ill	23
Dolton, Ill	17	Lambert, Ill	19	Ringwood, Ill	24
Downers Grove, Ill	15	Lansing, Ill	19	Riverdale, Ill	15
Dyer, Ind	15	Lemont, Ill. (See Note 65)	18	River Forest, Ill	17
East Chicago, Ind	15	Leroy, Ind	23	River Grove, Ill	17
East Gary, Ind	20	Libertyville, Ill	20	Riverside, Ill	17
Elgin, Ill	25	Lisle, Ill	18	Robertdale, Ind	15
Dundee, Ill	21	Liverpool, Ind	20	Roby, Ind	15
Elk Grove, Ill	18	Lockport, Ill	20	Rockdale, Ill	20
Elmhurst, Ill	15	Lombard, Ill	17	Rondout, Ill	20
Elmwood Park, Ill	15	Long Lake, Ill	23	Roselle, Ill	18
Eola, Ill	20	Lottaville, Ind	20	Romeo, Ill	17
Evanston, Ill	15	Lowell, Ind	23	Ross, Ind	20
Everett, Ill	20	Lyons, Ill	17	Round Lake, Ill	23
Fairview, Ill	17	Manteno, Ill. (Note 70)	22	Sag Bridge, Ill	19
Flossmoor, Ill	18	Mannheim, Ill	17	St. Charles, Ill. (Note 90)	25
Forest Park, Ill	15	Matteson, Ill	17	St. John, Ind	20
Ft. Sheridan, Ill	18	Maynard, Ind	15	Sandwich, Ill	20
Fox Lake, Ill	22	Maywood, Ill	15	Schaumburg, Ill	18
Fox River Grove, Ill	20	McCook, Ill	15	Schererville, Ind	20
Franklin Park, Ill	15	McHenry, Ill	22	Schiller Park, Ill	17
Fullersburg, Ill	17	Melrose Park, Ill. (Note 75)	15	South Holland, Ill	17
Gary, Ind	20	Merrillville, Ind	20	Spring Forest, Ill	17
Geneva, Ill. (Note 35)	20	Michigan City, Ind. (Note 80)	30	Spring Grove, Ill	23
Glencoe, Ill	17	Midlothian, Ill	17	Statesville, Ill	20
Glen Ellyn, Ill	18	Miller, Ind	20	Steger, Ill	15
Glenview, Ill	20	Mokena, Ill	19	Summit, Ill	15
Glenwood, Ill	15	Momence, Ill	22	Sycamore, Ill. (Note 95)	25
Golf, Ill	17	Monee, Ill	20	Techny, Ill	15
Grant Park, Ill	21	Montgomery, Ill	20	Thornton, Ill	17
Grasselli, Ind	15	Mooseheart, Ill	20	Tinley Park, Ill	18
Grays Lake, Ill	20	Morton Grove, Ill	15	Tolleston, Ind	20
Great Lakes, Ill	20	Mt. Prospect, Ill	17	Union, Ill	23
Griffith, Ind	19	Mundelein, Ill	20	Valparaiso, Ind	25
Gurnee, Ill	20	Munster, Ind	15	Van Loen, Ind	20
Half Day, Ill	20	Naperville, Ill	20	Villa Park, Ill	15
Hammond, Ind. (Note 40)	15	New Chicago, Ind	20	Warrenville, Ill	19
Harvard, Ill	24	Niles, Ill	17	Wauconda, Ill	20
Harvey, Ill	15	Niles Center, Ill	15	Waukegan, Ill. (Note 100)	25
Hazel Crest, Ill	17	No. Aurora, Ill	20	Wayne, Ill	20
Hebron, Ill	24	Northbrook, Ill	18	Westchester, Ill	17
Hebron, Ind	23	No. Chicago, Ill. (Note 85)	25	West Chicago, Ill	20
Hessville, Ind	15	Oak Forest, Ill	17	Western Springs, Ill	18
Highland, Ind	15	Oak Glen, Ill	19	Westmont, Ill	18
Highland Park, Ill	18	Oak Lawn, Ill	17	Westmore, Ill	17
Highwood, Ill	18	Oak Park, Ill	15	Westwood, Ill	17
Hillside, Ill	17	Ontarioville, Ill	19	Wheaton, Ill	18
Hinsdale, Ill	15	Orland Park, Ill	17	Wheeler, Ind	21
Hobart, Ind	20	Oswego, Ill	21	Wheeling, Ill	20
Hollywood, Ill	17	Paisley, Ind	20	Whiting, Ind	15
Homewood, Ill	17	Palatine, Ill	19	Willow Springs, Ill	17
Hubbard Woods, Ill	17	Palmer, Ind	20	Wilmette, Ill	15
Huntley, Ill	22	Palos Park, Ill	17	Wilmington, Ill	23
Indian Hill, Ill	17	Park Ridge, Ill	15	Winfield, Ill	20
Indiana Harbor, Ind	15	Peotone, Ill	20	Winnetka, Ill	15
Itasca, Ill	18	Phoenix, Ill	17	Woodstock, Ill	30
Ivanhoe, Ill	17	Plainfield, Ill	20	Worth, Ill	17
Joliet, Ill	20			Yorkville, Ill	22
Justice Park, Ill	17			Zion, Ill. (Note 105)	25
Kankakee, Ill. (Note 30)	25				
Kenilworth, Ill	17				

For explanation of notes see pages 3 and 4.


LAKE MICHIGAN
GREEN BAY
MANITOWOC
Two Rivers
FOND DU LAC
Sheboygan
Port Washington
MILWAUKEE
South Milwaukee
Racine
KENOSHA
WIS.
ILL.
WAUKEGAN
Highland Park
Evanston
ELGIN
CHICAGO
AURORA
JOLIET
KANKAKEE
MICHIGAN CITY
SOUTH BEND
IND.
FORT WAYNE
LOGANSPORT


CHICAGO
AURORA
JOLIET
KANKAKEE
MICHIGAN CITY
SOUTH BEND
IND.
FORT WAYNE
LOGANSPORT
MUNCIE
INDIANAPOLIS
TERRE HAUTE
VINCENNES
EVANSVILLE
LOUISVILLE
IND.
IND.
IND.

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W. L. Meyer's MF–I. C. C. No. B–146

Carriers who will participate in rates named therein, showing points named in tariff with carriers serving such points

PARTICIPATING CARRIERS

No.	Name
51	A. & H. Truck Line, Inc.
52	Bates Motor Transport Lines, Inc.
53	Becraft Motor Express, W. R. Becraft, d/b/a/.
54	Bloomington, Bedford & Indianapolis Motor Freight, Ray Moon, d/b/a/.
55	A. O. Carter Truck Line, A. O. Carter, d/b/a/.
56	Day's Transfer Inc.
57	Drake & Houk Transfer Company, S. M. Drake and E. W. Houk, d/b/a/.
58	Eaton Transfer Company, T. H. Eaton, d/b/a/.
59	Evansville & Ohio Valley Railway Company, William A. Carson, Receiver.
60	Hargis Truck Line, Kenneth Hargis and Mathew Hargis, d/b/a/.
61	Hesler Transfer Co., Inc.
62	Huls Truck Service, R. A. Huls, d/b/a/.
63	Indianapolis & Southern Motor Express, Inc.
64	I. R. C. & D. Warehouse Corporation.
65	Kile's Motor Express, Wilbur T. Kile, d/b/a/.
66	La Fayette Indianapolis Transit Co., Inc.
67	Lamson Brothers Transportation, Alfred J. Lamson and John H. Lamson, d/b/a/.
68	L. B. K. & I. Transit Co., C. W. Clever, d/b/a/.
69	Lucas Motor Express, Fred J. Lucas and Martin J. Lucas, d/b/a/.
70	McClain Dray Line, Ross McClain, Sam McClain and John McClain, d/b/a/.
71	McDaniel Freight Lines, Incorporated.
72	McNaughton Transportation Service, H. M. McNaughton, d/b/a/.
73	Madison Motor Express, J. R. Green, d/b/a/.
74	Meadors & Allen, Inc.
75	Motor Distributing Corporation.
76	Motor Express, Inc.
77	Motor Freight Corporation.
78	Muncie and Indianapolis Motor Express, Floyd Bogan, d/b/a/.
79	North Manchester Trucking Company, H. E. Bussard and L. A. Young, d/b/a/.
80	Northwestern Transit Inc.
81	Orr Trucking Company, Inc.
82	Phillips Truck Line, Inc.
83	R. & D. Motor Express, Ray R. Davis, d/b/a/.
84	A. F. Reisinger Transfer, A. F. Reisinger, d/b/a/.
85	Schepper Truck Line, Sylvester H. Schnepper, d/b/a/.
86	Scott Truck Service, Henry Addison, d/b/a/.
87	Short Line Express Company, Incorporated.
88	Smock Motor Express Company, Abraham Smock, d/b/a/.
89	Southern Transportation Co., Fred W. Schildmeier, d/b/a/.
90	Lawrence Turner Trucking Company, Lawrence Turner, d/b/a/.
91	United Merchants Truck Lines, Inc.
92	Wabash Valley Express, Inc.
93	Wagner Trucking Company, Ora Wagner, d/b/a/.
94	Winder and Son, Inc.

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W. L. Meyer's MF-I. C. C. No. B-146

NONPARTICIPATING CARRIERS

No.	Name
41	O. I. M. Transit Corporation.
42	Bowser Truck Lines.
43	West Truck Lines.
44	Snell Truck Line.
45	Ray Davis Truck Line.

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Indiana towns	Carriers serving
Adams	72-88-69.
Akron	92.
Albany	37.
Alexandria	61-70.
Alfordsville	85.
Allisonville	51.
Amboy	92.
Amity	73-74-89.
Anderson	52-61-64-70-75-83-92-93-94.
Andersonville	88.
Andrews	92.
Angola	41.
Antiville	64.
Arcadia	61.
Argos	68.
Arlington	88.
Arthur	63.
Attica	52-71.
Auburn	41.
Aurora	52-72-88.
Avilla	41.
Bandon	51-60.
Batesville	65-72-88-69.
Bedford	54-63-74.
Berne	64.
Bicknell	63.
Bloomfield	63.
Blooming Grove	88.
Bloomington	54-63.
Bluffton	67.
Boonville	51-62-63-82-85.
Bourbon	76.
Bremen	76.
Brazil	52-54-77.
Brookville	52-88.
Brownsburg	71.
Brownstown	63-74.
Bruceville	63.
Bryant	64.
Burlington	68.
Cambridge City	64-75-93.
Campbellsburg	74.
Cannelton	51-60-63.
Carmel	53-61-92.
Carrollton	68-88.
Cedar Grove	88.
Centerville	64-75.
Chandler	62-63-82-85.
Charlottesville	64-75-86.
Chesterfield	61-64-75-83.
Chesterton	80.
Chrisney	51-60-62.
Churubusco	56.
Cicero	42.
Clarks Hill	43.
Clay City	63.
Claypool	92.
Clermont	71.
Clinton	76.
Coal City	63.
Columbia City	87.
Columbus	52-54-73-74-89.
Connersville	52-64-75-85-93.
Converse	70-92.
Corydon	51-54-60.
Covington	71.
Crawfordsville	52-71.
Cynthiana	84.
Dale	62-63-82.
Daleville	61-64-75-83.
Dayton	43.
Decatur	52-64.
Decker	62.
Delaware	69-88.
Dellsboro	88.
Delphi	68.
Dillsboro	69-62-72-88.
Dublin	64-75.
Dover	71.
Dunkirk	57.
Dunreith	64-75-86-88.
Eaton	67.
Edinburg	73-74-89.
Edwardsport	63.
Elkhart	52-56-80-87-92.
Ellettsville	54.
Elnora	63.
Elrod	69-63-72-88.
Elwood	52-61.
Emporia	78.
English	60.
Etna Green	92.
Evansville	51-52-59-60-62-63-77-82-85.
Everton	88.
Ferdinand	63-82.
Flat	67.
Five Points	69-64-88.
Ft. Benj. Harrison	83-94.
Ft. Branch	62-63-77.
Fort Wayne	52-56-64-67-70-79-81-87-92.
Fortville	83-94.
Fowler	68.
Fountaintown	88.
Francisco	63.
Frankfort	52-66.
Frankfort	52-73-89.
Frankton	61.
Freedom	63.
Fremont	41.
French Lick	63-74-77.
Gas City	70-92.

Indiana towns	Carriers serving
382 Gaston	93.
Gentryville	62-63-82.
Germantown	75.
Glenwood	88.
Goshen	52-56-87-92.
Gosport	63.
Grandview	51-60.
Greencastle	91.
Greenfield	52-58-64-75.
Greensburg	65-69-72-88.
Greenwood	73-89.
Greentown	70.
Gwynneville	88.
Hagerstown	64-75-93.
Hartford City	67.
Hatfield	51-59-60.
Haubstadt	62-63.
Hazelton	62-77.
Hillsboro	71.
Holton	63-69-88.
Honey Creek	78.
Howe	41.
Huntertown	41.
Huntingburg	62-63.
Huntington	63-70-81-92.
Huntsville	83-94.
Indiana State Farm	91.
Indiana State Reformatory	94.
Indianapolis	52-53-54-58-61-63-64-69-70-72-73-74-75-77-78-83-86-88-89-90-92
Ingalls	83-94.
Jamestown	71.
Jasper	62-63-82.
Jonesboro	70-92.
Julietta	88.
Kendallville	52-56.
Kingsland	67.
Knightstown	52-64-75-86.
Kokomo	52-53-70-92.
Kyle	65-69-88.
Ladoga	71.
Lagrange	52.
La Fayette	67-68.
Lagro	92.
Laketon	79.
Lapel	61.
La Porte	68-80-87.
Lawrence	94.
Lawrenceburg	57-63-65-69-72-88.
Leavenworth	51-60.
Lebanon	52-66-71-90.
Lewisville	64-75-93.
Ligonier	56.
Limedale	92.
Linnville	85.
Linton	63.
Lizton	71.
Logansport	68-92.
Loogootee	63-77-85.
Lyons	63.
Macy	92.
Madison	73.
Manchester	65-69-72-88.
Markleville	64-78.
Marion	70-92-93-94.
Martinsville	54-55-63-74.
Matthews	92.
Mays	88.
Mechanicsburg	66-78.
Medora	74.
Metamora	52-88.
Mexico	92.
Michigan City	56-80-87.
Middletown	78.
Milan	69-72-88.
Milroy	88.
Milton	64-75-93.
Mishawaka	52-56-80-87-92.
Mitchell	54-64-74.
Mooreshill	69-88.
Morris	65-69-72-88.
Morristown	88.
Montgomery	63-85.
Monticello	68.
Montpelier	67.
McCordsville	83-94.
Mt. Summit	64-75-83.
Mt. Vernon	52.
Mulberry	48.
Muncie	52-57-61-64-67-70-75-78-83-92-93.
Nappanee	92.
Napoleon	69-72-88.
New Albany	51-54-60-74.
New Augusta	43.
Newberg	51-59-60.
Newberry	63.
New Bethel	65-69-72-88.
Newcastle	64-75-83-93.
New Harmony	84.
New Palestine	88.
New Point	65-69-72-88.
New Ross	71.
New Salem	88.
Newtonville	51-60.
Noblesville	61.
North Madison	73.
383 North Manchester	79-92.
North Vernon	63-73.
Nottingham	67.
Oakland City	63.
Oaklandon	94.
Odon	63.
Oldenburg	65-72-88.
Orland	41.
Orleans	54-63-74.
Osceola	56-80-87.
Osgood	69-72-88.
Ossian	67.
Ownesville	84.
Paoli	54-60-63-74-77.
Patoka	62-77.
Pekin	74.
Pendleton	94-64-70-83-94.
Penntown	65-69-72-88.
Pennville	64-75.
Pershing	64-75.
Peru	52-53-70-92.
Petersburg	62-63-84-85.
Petroleum	67.
Piercetown	44.
Pierceville	69-88.
Pittsboro	71.
Plainfield	77.
Plainville	63.
Pleasant Lake	41.
Pleasant View	65-69-72-88.
Plymouth	52-68-70-92.
Portland	52-57-64.
Poseyville	84.
Princeton	52-62-63-77-84.
Putnamville	91.
Redkey	57.
Reedsville	88.
Reiffsburg	67.
Richland	59-63.
Richmond	52-57-64-70-75-93.
Rich Valley	92.
Roanoke	81.
Rob Roy	71.
Rochester	68-70-92.
Rockport	51-59-60-62.
Rockville	52-71.
Roll	67.
Rome City	41.

Indiana towns	Carriers serving	Indiana towns	Carriers serving
Royalton	66.	Union City	87.
Royerton	67.	Vallonia	63-74.
Rushville	88.	Valparaiso	52-70-79-92.
St. Croix	51.	Veedersburg	71.
St. Paul	69-72-88.	Vernon	63-73.
Salem	63-74.	Versailles	69-52-63-72-88.
Sanborn	63.	Vincennes	84-52-62-63-77.
Sandusky	88.	Wabash	92.
Seymour	52-63-74-89.	Wakarusa	92.
Shannondale	71.	Waldron	69-72-88.
Shelbyville	52-69-63-72-88.	Warsaw	52-87-92.
Shideler	67.	Washington	63-85-77.
Shirley	83.	Waterloo	56.
Shoals	77-85.	Waverly	54-55.
Silver Lake	92.	Waynesdale	67.
Southport	73-89.	Waynetown	71.
Smartsburg	71.	West Baden	63-74-77.
South Bend	52-56-58-80-92.	Westfield	53-61-92.
Sparta	69-88.	Westfork	51-60.
Spencer	54-63.	Westphalia	63.
Spiceland	75-83-86.	Whiteland	73-89.
Straughn	64-75.	Whitestown	43.
Spurgeon	85.	Whitesville	71.
Stilesville	91-77.	Wilkinsburg	45.
Sullivan	77.	Williamsport	71.
Sulphur	51.	Williamstown	88.
Sunman	69-65-72-88.	Winchester	57-64-70.
Swits City	54-63.	Winamac	68-92.
Taylorsville	73-89.	Winona Lake	87.
Tell City	51-60.	Wolcottville	41.
Terre Haute	52-54-64-71-77-91.	Yankeetown	51-60.
Thorntown	43.	Yoder	67.
Tipton	53-61.	Yorktown	61-64-75-83.
Troy	51-60.	Zionsville	68.

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W. L. Meyer's MF–I. C. C. No. B–68

Carriers who will participate in rates named therein, showing points named in tariff with carriers serving such points

CARRIERS

No.	Name
1.	Advance Transportation Company.
2.	Apperley, E. Apperley, d/b/a.
3.	Bartzen Cartage Company, Albert S. Bartzen, d/b/a.
4.	Ben-Lee Motor Service Co.
5.	Checker Express Company.
6.	Commercial Truckers.
7.	Consolidated Forwarding Co., Inc.
8.	Co-Ordinated Transport, Inc., of Ill.
9.	Cripps Overland Express, Inc.
10.	Cushman Motor Delivery Company.
11.	Dixie Motor Freight Co.
12.	Dunn Transport Company, Joseph A. & Wm. J. Dunn, d/b/a.
13.	Erie Freight Lines, Inc.
14.	Ever-Ready Transit Co., Inc.
15.	F. Landon Cartage Company.
16.	Interstate Dispatch, Inc.
17.	Interstate Motor Freight System.
18.	Krema Trucking Co.
19.	Krupp Motor Transport Co., Inc.
20.	Kutzler Cartage, Frank Kutzler, Jr., d/b/a.
21.	Liberty Trucking Company, Frank Cetrano & Thomas F. Maglio, Co-Partners.
22.	Litza Bros. Freight Forwarders.
23.	Michigan Tri-State Motor Express, Joseph R. Mammina, d/b/a.
24.	M. J. Seiwert Forwarding Company.
25.	Milwaukee Truck Service, Inc.
26.	North Shore Motor Express Co., Inc.
27.	O. K. Motor Service, Tony Consentino, d/b/a.
28.	Olson, Fred, & Sons Motor Service, Inc.
29.	Reliable Transit Company.
30.	Roosevelt Cartage Company.
31	Royal Transit, Inc.
32.	Scheffler, J. L., Forwarder.
33.	Service Transport Company.
34.	Webber Cartage Line, Inc.
35.	Yule Truck Lines, Inc.
36.	Wisconsin Fox Valley Transit Co..

Towns	Carriers serving	Towns	Carriers serving
Appleton, Wis	36.	Milwaukee, Wis	All except 33 and 36.
Combined Locks, Wis	36.	Neenah, Wis	36.
Cudahy, Wis	All except 33 and 36.	Oshkosh, Wis	36.
De Pere, Wis	36.	Racine, Wis	All except 36.
Fond du Lac, Wis	36.	St. Francis, Wis	All except 33 and 36.
Fox Point, Wis	All except 33 and 36.	Sheboygan, Wis	9–24–32.
Green Bay, Wis	36.	Shorewood, Wis	All except 33 and 36.
Kaukauna, Wis	36.	South Milwaukee, Wis	All except 33 and 36.
Kenosha, Wis	All except 36.	Two Rivers, Wis	9–24–32.
Kimberly, Wis	36.	Wauwatosa, Wis	All except 33 and 36.
Kohler, Wis	9–24–32.	West Allis, Wis	All except 33 and 36.
Little Chute, Wis	36.	West Milwaukee, Wis	All except 33 and 36.
Manitowoc, Wis	9–24–32.	White Fish Bay, Wis	All except 33 and 36.
Menasha, Wis	36.		

385 Carriers participating in rates named therein, showing points served by these carriers, named in tariff

(Metropolitan Area of Chicago)

CARRIERS

A. & A. Joliet Transportation Co.
Aurora Transfer Company.
Austgen Express & Storage Co.
J. Bedford Motor Service, Inc.
Beske, A. F., Cartage Co.
Bowron Motor Service, L. C. Bowron.
Browns Express, Inc.
Fred Burren Transfer.
Chicago Belt Freight Lines, Inc.
Chicago Heights Trucking Co., Inc.
Consolidated Cartage Co., Inc.
Consolidated Forwarding Co., Inc.
Co-Ordinated Transport, Inc., of Ill.
Corey & Evans, Inc.
Crown Point Transfer Company; Henry, Walter H. & Elmer M. Heisterberg, d/b/a.
Cushman Motor Delivery Company.
Elgin Storage & Transfer Co
Exon Motor Service.
Ferguson Transfer & Storage, F. A. Ferguson, d/b/a.
Fox Valley Motor Service, Inc.
Gold Star Motor Service, Inc.
Hoekstra Motor Express (Not. Inc.).
Hollett Motor Service, Florence V. Hollett, d/b/a.
Hollister's Motor Cartage, Inc.
Houdek's Motor Service, Inc.
Joliet Reefer Transit Line, J. R. Riley, d/b/a.
Joliet Warehouse & Transfer Company.
Kehe Motor Service.
Kroma Trucking Co.
Kutzler Cartage, Frank Kutzler, Jr., d/b/a.
Leoni Motor Express.
Liberty Trucking Co., Inc.
Martin Transfer & Storage Co.
Meinke & Sons, Inc.
Murphy Motor Express.
Niedert Motor Service, C. W. Niedert, d/b/a.
Northern Illinois Freight Lines, Inc.
Northern Indiana Trucking, Inc.
North Shore Motor Express Co., Inc.
Northwestern Transit, Inc.
Fred Olson & Son Motor Service, Inc.
Pagoria's Express Service, Inc.
Paine Motor Express.
Pennoyer Merchants Transfer Company.
Plumer's Motor Express, H. R. Plumer, d/b/a.
Rockford Motor Service, Inc.
Roosevelt Cartage Company.
Sauter-Dobson Teaming Company.
Schiek Motor Express, Inc.
M. J. Seiwert Forwarding Company.
Service Cartage Co., Inc.
Short Line Express Company, Incorporated.
The N. C. Sorensen Motor Express Co., Inc.
H. Strahl Motor Service, H. Strahl, d/b/a.
Tucker Freight Lines, Inc.
Universal Motor Service, Walter & Joseph Jankiwski, d/b/a.
Valentine Transfer & Storage Co.
Webber Cartage Line, Inc.
Welsh Brothers Motor Service, Matthew C. & Robert J. Welsh, d/b/a.
Wieringa Bros. Cartage Co
Zellers Transit Company, Bert L. Zellers, d/b/a.

POINTS SERVED

Addison, Ill.
Aetna, Ind.
Ainsworth, Ind.
Aiden, Ill.
Algonquin, Ill.
Antioch, Ill.
Arlington Heights, Ill.
Argo, Ill.
Aurora, Ill.
Axmour, Ind.
Bannockburn, Ill.
Barrington, Ill.
Bartlett, Ill.
Batavia, Ill.
Beecher, Ill.
Bellwood, Ill.
Belmont, Ill.
Belmont Heights, Ill.
Bensenville, Ill.
Berkeley, Ill.
Bloomingdale, Ill.
Blue Island, Ill.
Bourbonnais, Ill.
Bradley, Ill.
Braidwood, Ill.
Bristol, Ill.
Broadview, Ill.
Brookfield, Ill.
Buffington, Ind.
Burnham, Ill.
Burr Oak, Ill.
Calumet City, Ill.
Carpentersville, Ill.

Cary, Ill.
Cedar Lake, Ind.
Channel Lake, Ill.
Chesterton, Ind.
Chicago Heights, Ill.
Clarendon Hills, Ill.
386 Cloverdale, Ill.
Coal City, Ill.
Congress Park, Ill.
Cook, Ind.
Creston, Ind.
Crete, Ill.
Crown Point, Ind.
Crystal Lake, Ill.
Deep River, Ind.
Deerfield, Ill.
DeKalb, Ill.
Des Plaines, Ill.
Dixmoor, Ill.
Dolton, Ill.
Downers Grove, Ill.
Dyer, Ind.
East Chicago, Ind.
East Gary, Ind.
Elgin, Ill.
Dundee, Ill.
Elk Grove, Ill.
Elmhurst, Ill.
Elmwood Park, Ill.
Eola, Ill.
Evanston, Ill.
Everett, Ill.
Fairview, Ill.
Flossmoor, Ill.
Forest Park, Ill.
Ft. Sheridan, Ill.
Fox Lake, Ill.
Fox River Grove, Ill.
Franklin Park, Ill.
Fullersburg, Ill.
Gary, Ind.
Geneva, Ill.
Glencoe, Ill.
Glen Ellyn, Ill.
Glenview, Ill.
Glenwood, Ill.
Golf, Ill.
Grant Park, Ill.
Grasselli, Ind.
Grays Lake, Ill.
Great Lakes, Ill.
Griffith, Ind.
Gurnee, Ill.
Half Day, Ill.
Hammond, Ind.
Harvard, Ill.
Harvey, Ill.
Hazel Crest, Ill.
Hebron, Ill.
Hebron, Ind.
Hessville, Ind.
Highland, Ind.
Highland Park, Ill.
Highwood, Ill.
Hillside, Ill.
Hinsdale, Ill.
Hobart, Ind.
Hollywood, Ill.
Homewood, Ill.
Hubbard Woods, Ill.
Huntley, Ill.
Indian Hill, Ill.
Indiana Harbor, Ind.
Itasca, Ill.
Ivanhoe, Ill.
Joliet, Ill.
Justice Park, Ill.
Kankakee, Ill.
Kenilworth, Ill.
La Grange, Ill.
Lake Bluff, Ill.
Lake Forest, Ill.
La Porte, Ind.
Lake Villa, Ill.
Lake Zurich, Ill.
Lambert, Ill.
Lansing, Ill.
Lemont, Ill.
Leroy, Ind.
Libertyville, Ill.
Lisle, Ill.
Liverpool, Ind.
Lockport, Ill.
Lombard, Ill.
Long Lake, Ill.
Lottaville, Ind.
Lowell, Ind.
Lyons, Ill.
Manteno, Ill.
Mannheim, Ill.
Matteson, Ill.
Maynard, Ind.
Maywood, Ill.
McCook, Ill.
McHenry, Ill.
Melrose Park, Ill.
Merrillville, Ind.
Michigan City, Ind.
Midlothian, Ill.
Miller, Ind.
Mokena, Ill.
Momence, Ill.
Monee, Ill.
Montgomery, Ill.
Mooseheart, Ill.
Morton Grove, Ill.
Mt. Prospect, Ill.
Mundelein, Ill.
Munster, Ind.
Naperville, Ill.
New Chicago, Ind.
Niles, Ill.
Niles Center, Ill.
No. Aurora, Ill.
Northbrook, Ill.
No. Chicago, Ill.
Oak Forest, Ill.
Oak Glen, Ill.
Oak Lawn, Ill.
Oak Park, Ill.
Ontarioville, Ill.
Orland Park, Ill.
Oswego, Ill.
Paisley, Ind.
Palatine, Ill.
Palmer, Ind.
Palos Park, Ill.
Park Ridge, Ill.
Peotone, Ill.
Phoenix, Ill.
Plainfield, Ill.
Plano, Ill.
Posen, Ill.
Prairie View, Ill.
Ravinia, Ill.
Richmond, Ill.
Ridgefield, Ill.
Ringwood, Ill.
Riverdale, Ill.
River Forest, Ill.
River Grove, Ill.
Riverside, Ill.
Robertdale, Ind.
Roby, Ind.
Rockdale, Ill.
Rondout, Ill.
Roselle, Ill.
Romeo, Ill.
Ross, Ind.
Round Lake, Ill.
Sag Bridge, Ill.
St. Charles, Ill.
St. John, Ind.
Sandwich, Ill.
Schaumburg, Ill.
Schererville, Ind.
Schiller Park, Ill.
South Holland, Ill.
Spring Forest, Ill.
Spring Grove, Ill.
Statesville, Ill.
Steger, Ill.
Summit, Ill.
Sycamore, Ill.
Techny, Ill.
Thornton, Ill.
Tinley Park, Ill.
Tolleston, Ind.
Union, Ill.
Valparaiso, Ind.
Van Loen, Ind.
Villa Park, Ill.
Warrenville, Ill.
Wauconda, Ill.
Waukegan, Ill.
Wayne, Ill.
Westchester, Ill.
West Chicago, Ill.
Western Springs, Ill.

Westmont, Ill.
Westmore, Ill.
Westwood, Ill.
Wheaton, Ill.
Wheeler, Ind.
Wheeling, Ill.
Whiting, Ind.
Willow Springs, Ill.
Wilmette, Ill.
Wilmington, Ill.
Winfield, Ill.
Winnetka, Ill.
Woodstock, Ill.
Worth, Ill.
Yorkville, Ill.
Zion, Ill.

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Gerard Exhibit 3

Before the Interstate Commerce Commission

I. & S. Docket M 247

Proportional Concentration and Distribution Rates

Exhibit No. ———

Statement showing points of origin or destination of L. C. L. shipments moving at through rates to or from stations shown in suspended tariffs.

Town	State	Town	State	Town	State
Abbott	Texas.	Appleby	Texas.	Baton Rouge	La.
Aberdeen	S. D.	Araby	Ariz.	Battle Creek	Mich.
Abilene	Kan.	Archer City	Texas.	Bay City	Mich.
Abilene	Texas.	Ardmore	Okla.	Bay City	Texas.
Acacia	Ariz.	Argentine	Kan.	Bayonne	N. J.
Acipco	Ala.	Arkansas City	Kan.	Bay St. Louis	Miss.
Acme	Texas.	Arlington	Ariz.	Baytown	Texas.
Ada	Okla.	Arlington	Kan.	Bayview	Ala.
Afton	N. M.	Arlington	Mass.	Bayway	N. J.
Akron	Ohio.	Arlington	N. J.	Beacon Falls	Conn.
Alamo	Texas.	Arlington	Texas.	Beatrice	Neb.
Alamogordo	N. M.	Armourdale	Kan.	Beaumont	Texas.
Albany	N. Y.	Arp	Texas.	Beaver	Pa.
Albany	Texas.	Asbury Park	N. J.	Beaver Falls	Pa.
Albion	Mich.	Asher	Ariz.	Bedford	Ohio.
Alexandria	Va.	Ashtabula	Ohio.	Beeville	Texas.
Algiers	La.	Ashurst	Ariz.	Belford	N. J.
Alice	Texas.	Aspinwall	Pa.	Belleville	Ill.
Aliquippa	Pa.	Atchison	Kan.	Belleville	N. J.
Allenhurst	N. J.	Athenia	N. J.	Bellevue	Ky.
Allen Park	Mich.	Athens	Ga.	Bellevue	Pa.
Allentown	Pa.	Athens	Texas.	Bellevue	Texas.
Alliance	Ohio.	Atlanta	Ga.	Bells	Texas.
Allwood	N. J.	Atlanta	Texas.	Belmar	N. J.
Altair	N. M.	Atlantic City	N. J.	Belmont	Mass.
Alton	Ill.	Atlantic Highlands	N. J.	Belton	Texas.
Altus	Okla.	Attleboro	Mass.	Benson	Ariz.
Alvarado	Texas.	Aubrey	Texas.	Benton Harbor	Mich.
Alvin	Texas.	Auburn	R. I.	Berea	Ky.
Alvord	Texas.	Aurora	Ind.	Berea	Ohio.
Amado	Ariz.	Austin	Texas.	Berkley	Mich.
Amarillo	Texas.	Avalon	Pa.	Berlin	Conn.
Ambler	Pa.	Avenel	N. J.	Berlin	N. J.
Ambridge	Pa.	Avery	Texas.	Bernardino	Ariz.
Amesbury	Mass.	Avon	N. J.	Bessemer	Ala.
Amherst	Ohio.	Avondale	Ala.	Bethel	Conn.
Ampere	N. J.	Avondale	Ohio.	Bethlehem	Pa.
Anadarko	Okla.	Avondale	Pa.	Beverly	Mass.
Ancho	N. M.	Babbitt	N. J.	Beverly	N. J.
Anglum	Mo.	Bagwells	Texas.	Big Springs	Texas.
Angola	N. Y.	Bailey	Texas.	Big Wells	Texas.
Animas	N. M.	Baird	Texas.	Biloxi	Miss.
Ann Arbor	Mich.	Ballinger	Texas.	Binghamton	N. Y.
Anniston	Ala.	Baltimore	Md.	Birmingham	Ala.
Anson	Texas	Bangs	Texas.	Birmingham	Mich.
Ansonia	Conn.	Barberton	Ohio.	Bisbee	Ariz.
Antelope	N. M.	Barksdale Field	La.	Bishop	Texas.
Apache	Ariz.	Barnsdall	Okla.	Bison	Kan.
Apan	N. M.	Bartlesville	Okla.	Black Rock	N. Y.

Town	State	Town	State	Town	State
Blackwater	Ariz.	Burton	Ohio.	Clarendon	Texas.
Blackwell	Okla.	Burton	Texas.	Clarksdale	Miss.
Blanket	Texas.	Bustletown	Pa.	Clarksville	Texas.
Blawnox	Pa.	Byberry	Pa.	Claude	Texas.
Bloomfield	N. J.	Byers	Texas.	Clayton	Mo.
Bloomfield	Pa.	Bylas	Ariz.	Cleburne	Texas.
Bloomington	Ill.	Caddo Mills	Texas.	Cleveland	Ohio.
Blossom	Texas.	Calabasas	Ariz.	Cleveland	Okla.
Blue	Okla.	Calumet	Ariz.	Cleveland	Texas.
Bluffdale	Texas.	Calvert	Texas.	Cleveland Heights	Ohio.
Blytheville	Ark.	Cambray	N. M.	Clifton	Md.
Bogalusa	La.	Cambridge	Mass.	Clifton	Ariz.
Bogota	N. J.,	Camden	N. J.	Clifton	N. J.
Bomarton	Texas.	Cameron	Texas.	Clinton	Conn.
Bond Hill	Ohio.	Campbell	Texas.	Clinton	Iowa.
Bonham	Texas.	Campo	Ariz.	Clouderoft	N. M.
Borger	Texas.	Camp Wood	Texas.	Clinton	Okla.
Bossier City	La	Canadian	Texas.	Clyde	Texas.
Boston	Mass.	Canonsburg	Pa.	Coahoma	Texas.
Boulder	Colo.	Canton	Md.	Coburg	Mo.
Bound Brook	N. J.	Canton	Mass.	Cochise	Ariz.
Bowen	N. M.	Canton	Ohio.	Coledon	Ariz.
Bowie	Ariz.	Cape Girardeau	Mo.	Coleman	Texas
Bowie	Texas.	Capitan	N. M.	College Hill	Ohio.
Bowling Green	Ky.	Carbon	Texas.	Collingsville	Conn.
Boynton	Okla.	Carbondale	Okla.	Colorado	Texas.
Braddock	Pa.	Carlstadt	N. J.	Colorado Springs	Colo.
389 Bradevelt	N. J.	Carlton Hill	N. J.	Columbia	Mo.
Bradley Beach	N. J.	Carmine	Texas.	Columbiana	Ohio.
Bradshaw	Texas.	Carnegie	Pa.	Columbus	Ga.
Brady	Texas.	Carney's Point	N. J.	Columbus	N. M.
Branchport	N. J.	Carondelet	Mo.	Columbus	Ohio.
Branford	Conn.	Carrick	Pa.	Columbus	Texas.
Brashear	Texas.	Carrizo Springs	Texas.	Comanche	Texas.
Bratenahl	Ohio.	Carrizozo	N. M.	Comfort	Texas.
Breckenridge	Texas.	Carsonville	Mo.	Commerce	Texas.
Breeds Island	Mass.	Carteret	N. J.	Como	N. J.
Bremond	Texas.	Carthage	Mo.	Como	Texas.
Brenham	Texas.	Carthage	Ohio.	Comstock	Texas.
Brentmore	Mo.	Carthage	Texas.	Concord	N. C.
Brentwood	Mo.	Cashion	Ariz.	Concord	N. H.
Bridesburg	Pa.	Casper	Wyo.	Conneaut	Ohio.
Bridgeport	Conn.	Cazenovia	N. Y.	Conroe	Texas.
Bridgeport	Pa.	Cedar Rapids	Iowa.	Conshohocken	Pa.
Bridgeport	Texas.	Celeste	Texas.	Coolidge 1	Ariz.
Bridgeton	Mo.	Center Line	Mich.	Cooper	Texas.
Bridgeton	N. J.	Center Point	Texas.	390 Corliss	Pa.
Brielle	N. J.	Central Falls	R. I.	Corona	N. M.
Brightmoor	Mich.	Centropolis	Mo.	Corpus Christi	Texas.
Brighton	Mass.	Chagrin Falls	Ohio.	Corrigan	Texas.
Brighton Station	Ohio.	Chamberlain	S. D.	Corsicana	Texas.
Bristol	Conn.	Chandler	Ariz.	Council Bluffs	Iowa.
Bristol	Pa.	Chanute	Kan.	Cotulla	Texas.
Bristow	Okla.	Chapel Hill	Texas.	Covington	Ky.
Brockport	N. Y.	Chappel	N. M.	Cowden	Ariz.
Brockton	Mass.	Chardon	Ohio.	Crafton	Pa.
Bronx	N. Y.	Charleroi	Pa.	Crandall	Texas.
Brookings	S. D.	Charlestown	Mass.	Cranford	N. J.
Brookline	Mass.	Charlotte	N. C.	Cranston	R. I.
Brooklyn	Ill.	Chase	Kan.	Creamery	Ariz.
Brooklyn	N. Y.	Chattanooga	Tenn.	Creighton	Pa.
Brooklyn Heights Village.	Ohio.	Chelsea	Mass.	Crescentville	Pa.
Brookston	Texas.	Chester	Pa.	Crockett	Texas.
Brownsville	Texas.	Chester	W. Va.	Cromwell	Conn.
Brownwood	Texas.	Chesterfield	Mich.	Crosby	Texas.
Bryan	Texas.	Chestnut Hill	Pa.	Cruz	Ariz.
Bryson	Texas.	Cheswick	Pa.	Cuero	Texas.
Buchan	Ariz.	Cheyenne	Wyo.	Cumberland	Md.
Buckeye	Ariz.	Chickasha	Okla.	Cumby	Texas.
Buda	Texas.	Chicopee	Mass.	Cuminsville Station	Ohio.
Buell	Ariz.	Childress	Texas.	Curtiss	Ariz.
Buffalo	N. Y.	Chillicothe	Texas.	Cushing	Okla.
Burholme	Pa.	Chilton	Texas.	Cuyahoga Falls	Ohio.
Burkburnett	Texas.	China	Texas.	Cuyahoga Heights Village.	Ohio.
Burleson	Texas.	Chrome	N. J.	Cynthiana	Ky.
Burlington	N. J.	Cincinnati	Ohio.	Dalhart	Texas.
Burlington	N. C.	Cisco	Texas.	Dallas	Texas.
Burlington	Texas.	Claremore	Okla.	Dallas Center	Iowa.

Town	State
Daleville	Ind.
Danbury	Conn.
Danielson	Conn.
Danville	Ill.
Danville	Ky.
Dawson	Okla.
Dayton	Ky.
Dayton	Ohio.
Dayton	Texas.
Deal	N. J.
Dearborn	Mich.
Decatur	Ill.
Decatur	Texas.
DeKalb	Texas.
Delawanna	N. J.
Del Rio	Texas.
Deming	N. M.
Denison	Texas.
Denton	Texas.
Denver	Colo.
Depew	N. Y.
Derby	Conn.
Des Moines	Iowa.
Detroit	Mich.
Detroit	Texas.
Devine	Texas.
Devon	Conn.
Devon	Pa.
D'Hanis	Texas.
Diboll	Texas.
Dickinson	Texas.
Dila	Ariz.
Dilley	Texas.
Docena	Ala.
Dodds	Texas.
Dodge City	Kan.
Dolomite	Ala.
Dome	Ariz.
Donna	Texas.
Dorchester	Mass.
Dormont	Pa.
Dothan	Ala.
Douglas	Ariz.
Dover	Ohio.
Downingtown	Pa.
Dragoon	Ariz.
Dravo	Ariz.
Driscoll	Texas.
Drumright	Okla.
Dundee	N. J.
Dublin	Texas.
Dunbar	W. Va.
Duncan	Ariz.
Duncan	Okla.
Dunellen	N. J.
Duquesne	Pa.
Durham	N. C.
Duran	N. M.
Eagle Lake	Texas.
Eagle Pass	Texas.
East Boston	Mass.
East Cleveland	Ohio.
E. Grand Forks	Minn.
East Hartford	Conn.
East Haven	Conn.
East Lake	Ala.
Eastland	Texas.
East Liberty	Pa.
East Liverpool	Ohio.
East Newark	N. J.
East Norwalk	Conn.
Easton	Pa.
East Orange	N. J.
E. Palestine	Ohio.
E. Pittsburgh	Pa.
E. Providence	R. I.
E. Rutherford	N. J.
E. St. Louis	Ill.
East Thomas	Ala.

Town	State
Eatontown	N. J.
Economy	Pa.
Ecorse	Mich.
Edcouch	Texas.
Eddystone	Pa.
Edgewater	Ala.
Edgewater	N. J.
Edgewood	Pa.
Edinburg	Texas.
Edna	Texas.
Egg Harbor	N. J.
Elberon	N. J.
El Campo	Texas.
Electra	Texas.
Elgin	Texas.
Elizabeth	N. J.
Elizabethport	N. J.
Elizabethtown	Pa.
Elk City	Okla.
Elmendorf	Texas.
Elmwood Place	Ohio.
El Paso	Texas.
El Reno	Okla.
Elyria	Ohio.
Emsworth	Pa.
Encinal	Texas.
Enid	Okla.
Ennis	Texas.
Ensley	Ala.
Erie	Pa.
Erman	Ariz.
Esmond	Ariz.
Essex	Conn.
Etna	Pa.
Euclid	Ohio.
Euclid Heights	Ohio.
Euclid Village	Ohio.
Eustace	Texas.
Evanston	Ohio.
Evansville	Ind.
Everett	Mass.
Exum	Ala.
Fairbank	Ariz.
Fairfield	Ala.
Fairfield	Conn.
Fairhaven	N. J.
Fairmont	W. Va.
Fairview	N. J.
Falfurrias	Texas.
Fall River	Mass.
Falls City	Texas.
Fargo	N. D.
Farmersville	Texas.
Fayetteville	Texas.
Ferguson	Mo.
Ferndale	Mich.
Fern Rock	Pa.
Firestone	Colo.
Fitchburg	Mass.
391 Flat Rock	Mich.
Flint	Mich.
Flatonia	Texas.
Florence	Ala.
Florence	Ariz.
Floresville	Texas.
Floydada	Texas.
Fords	N. J.
Forestville	Conn.
Ft. Collins	Colo.
Ft. Des Moines	Iowa.
Ft. Huachuca	Ariz.
Ft. Madison	Iowa.
Fort Sill	Okla.
Fort Smith	Ark.
Ft. Thomas	Ariz.
Ft. Worth	Texas.
Foster	N. M.
Fowler	Ariz.
Fox Chase	Pa.

Town	State
Framingham	Mass.
Frankenburg	Ariz.
Frankford	Pa.
Franklin	Mass.
Frederick	Md.
Fredericksburg	Texas.
Fredericksburg	Va.
Freedom	Pa.
Freeport	Texas.
Fremont	Neb.
Freneau	N. J.
Fulton	N. Y.
Gadsden	Ala.
Gage	N. M.
Gainesville	Texas.
Galveston	Texas.
Garfield	N. J.
Garfield Heights	Ohio.
Garland	Texas.
Garrison	Texas.
Garwood	N. J.
Gastonia	N. C.
Gate City	Ala.
Gatesville	Texas.
Geneva	Ohio.
Georgetown	Ky.
Georgetown	Texas.
Germantown	Pa.
Gibbstown	N. J.
Giddings	Texas.
Gila	Ariz.
Gilbert	Ariz.
Gillespie	N. J.
Girard	Ohio.
Girard Point	Pa.
Gladewater	Texas.
Glasgo	Conn.
Glassboro	N. J.
Glassport	Pa.
Glastonbury	Conn.
Glendale	Mo.
Globe	Ariz.
Gloucester	Mass.
Gloucester	N. J.
Gloversville	N. Y.
Gonzales	Texas.
Goose Creek	Texas.
Gore	Okla.
Gorman	Texas.
Graham	Texas.
Grand Bay	Ala.
Grand Forks	N. D.
Grand Island	Neb.
Grand Prairie	Tex.
Grandview	Tex.
Granger	Tex.
Granite City	Ill.
Grasselli	Ala.
Grasselli	N. J.
Greeley	Colo.
Greensboro	N. C.
Greensburg	Pa.
Greenville	Miss.
Greenville	Texas.
Greenwich Point	Pa.
Greenwood	Miss.
Gregory	Texas.
Gretna	La.
Griffin	Ga.
Groesbeck	Texas.
Grosse Pointe	Mich.
Groton	Conn.
Guilford	Md.
Gulfport	Miss.
Guthrie	Okla.
Hatchita	N. M.
Hackensack	N. J.
Haledon	N. J.
Halfway	Mich.

Town	State	Town	State	Town	State
Hamlin	Texas.	Jamestown	N. Dak.	Liberty	Tex.
Hamtramck	Mich.	Jean	Ariz.	Lincoln	Nebr.
Handley	Texas.	Jefferson	Ohio.	Lincoln	N. J.
Hanover	Mass.	Jefferson	Tex.	Lincoln Park	Mich.
Harlingen	Texas.	Jefferson Barracks	Mo.	Lindale	Tex.
Harrisburg	Texas.	Jefferson City	Mo.	Linden	N. J.
Harrison	N. J.	Jennings	Mo.	Linndale Village	Ohio.
Hartford	Conn.	Jersey City	N. J.	Lirim	Ariz.
Harvey	La.	Jewett City	Conn.	Litchfield	Ariz.
Hasbrouck Heights	N. J.	Joaquin	Tex.	Little Rock	Ark.
Haslam	Texas.	Johnstown	Pa.	Little Silver	N. J.
Hassayampa	Ariz.	Jonesboro	Ark.	Livingston	Tex.
Hastings	Nebr.	Joplin	Mo.	Llano	Tex.
Hattiesburg	Miss.	Kalamazoo	Mich.	Lochmoor	Mich.
Haverhill	Mass.	Kansas City	Kans.	Lockhart	Tex.
Hawthorne	N. J.	Kansas City	Mo.	Lockland	Ohio.
Hayden	Ariz.	Karnes City	Tex.	Locust Point	Md.
Hays	Pa.	Kaufman	Tex.	Lodi	N. J.
Hazel Park	Mich.	Keansburg	N. J.	Logan	Pa.
Hazlet	N. J.	Kearney	Nebr.	Logans Ferry	Pa.
Hearne	Tex.	Kearny	N. J.	Long Branch	N. J.
Hebbronville	Tex.	Keasbey's	N. J.	Long Island City	N. Y.
Helena	Ariz.	Kemp	Tex.	Longview	Tex.
Hempstead	Tex.	Kendall	Ariz.	Lorain	Ohio.
Henderson	Tex.	Kenedy	Tex.	Loraine	Tex.
Henderson's Pt	Miss.	Kenilworth	N. J.	Lordsburg	N. Mex.
Henrietta	Tex.	Kenmore	Ohio.	Los Angeles	Calif.
Henryetta	Okla.	Kennett Square	Pa.	Lott	Tex.
Hereford	Tex.	Kensington	Conn.	Louise	Tex.
Hermanas	N. M.	Kensington	Pa.	Louisville	Ky.
Highlands	N. J.	Kent	Ohio.	Louisville	Ohio.
Highland Park	Iowa.	Kerrville	Tex.	Lowell	Mass.
Highland Park	Mich.	Ketona	Ala.	Lubbock	Tex.
Highlandtown	Md.	Keyport	N. J.	Ludlow	Ky.
High Point	N. C.	Kilgore	Tex.	Lufkin	Tex.
Hillsboro	Tex.	Kings Mills	Ohio.	Luling	Tex.
Hillside	N. J.	Kingsville	Tex.	Luxemburg	Mo.
Hobart	Okla.	Kinloch Park	Mo.	Lyndhurst	N. J.
Hoboken	N. J.	Kirkwood	Mo.	Lynn	Mass.
Holdenville	Okla.	Klondike	Tex.	Mabank	Tex.
Holland	Tex.	Knoxville	Tenn.	Macedon	N. Y.
Hollywood	Tenn.	Kofa	Ariz.	Macon	Ga.
Holmesburg	Pa.	Kokomo	Ind.	Madison	Ill.
Holyoke	Mass.	Kreole	Miss.	Madison	S. Dak.
Homestead	N. J.	Lackawanna	N. Y.	Madisonville	Ohio.
Homestead	Pa.	La Crosse	Wis.	Magma	Ariz.
Homewood	Pa.	Lafayette	La.	Malden	Mass.
Hominy	Okla.	La Feria	Tex.	Manasquan	N. J.
Hondo	Tex.	La Grange	Ga.	Manayunk	Pa.
Hopkinsville	Ky.	La Grange	Tex.	Manchester	Conn.
Hot Springs	Ark.	Lake Charles	La.	Manchester	N. H.
Houston	Tex.	Lakewood	Mo.	Mangum	Okla.
Howard Park	Md.	Lakewood	N. J.	Manhattan	Kans.
Howe	Tex.	Lakewood	Ohio.	Mansfield	Mass.
Humble	Tex.	Lambert Field	Mo.	Manville	N. J.
Huntington	Tex.	Lamott	Pa.	Maple Heights	Ohio.
Huntsville	Ala.	Lampasas	Tex.	Maplewood	Mo.
Huntsville	Tex.	LaPryor	Tex.	Maplewood	N. J.
Hubbard	Ohio.	Lancaster	N. Y.	Marcus Hook	Pa.
Huron	S. D.	Lancaster	Pa.	Maricopa	Ariz.
Hutchins	Tex.	Lansdale	Pa.	Mariemont	Ohio.
Hutchinson	Kan.	Lansing	Mich.	Marine City	Mich.
Hyder	Ariz.	Laredo	Tex.	Markham	Tex.
Hyde Park	Mass.	Laughlin	Ohio.	Marlboro	Mass.
Hyde Park	Ohio.	Laurel	Md.	Marlboro	N. J.
Independence	Kan.	Lawndale	Pa.	Marlin	Tex.
Independence	Mo.	Lawrence	Kans.	Marrero	La.
Indianapolis	Ind.	Lawrence	Mass.	Marsh	Ariz.
Ingram	Pa.	Lawrenceburg	Ind.	Marshall	Tex.
Irondale	Ala.	Lawton	Okla.	Mars Hill Sta	Ind.
Irvington	N. J.	Leavenworth	Kans.	Marysville	Mich.
Iselin	N. J.	Leeds	Mo.	Mason	Ohio.
392 Issikooda	Ala.	Lenox	Tenn.	Matador	Tex.
Italy	Tex.	Leominster	Mass.	Matawan	N. J.
Itasca	Tex.	Leonard	Tex.	Mathis	Tex.
Ivorydale	Ohio.	Leonardo	N. J.	Maurer	N. J.
Jacksboro	Tex.	Lewis Springs	Ariz.	Maxwell	Tex.
Jackson	Miss.	Lexington	Ky.	Maywood	N. J.
Jacksonville	Tex.	Liberty	Ariz.	McAlester	Okla.

Town	State
McAllen	Tex.
McComb	Miss.
McKeesport	Pa.
McKees Rocks	Pa.
McKinney	Tex.
McLean	Tex.
McQueen	Ariz.
Medford	Mass.
Medina	Ohio.
393 Melrose	Mass.
Melvindale	Mich.
Memphis	Tenn.
Menlo Park	N. J.
Mercedes	Texas.
Meriden	Conn.
Merkel	Texas.
Mesa	Ariz.
Methuen	Mass.
Metuchen	N. J.
Mexia	Texas.
Miami	Ariz.
Middlesboro	Ky.
Middlefield	Ohio.
Middletown	Conn.
Middletown	N. J.
Midland	Texas.
Midlothian	Texas.
Miles	Texas.
Milford	Conn.
Milford	Texas.
Millbourne	Pa.
Milldale	Conn.
Millsap	Texas.
Milltown	N. J.
Millville	N. J.
Milton	Mass.
Mims	Ala.
Mineola	Texas.
Mineral Wells	Texas.
Minero	N. M.
Minerva	Ohio.
Ming	Ariz.
Minneapolis	Minn.
Minnequa	Colo.
Minnesota Transfer	Minn.
Mingo	Pa.
Mishawaka	Ind.
Mission	Texas.
Mitchell	S. D.
Moberly	Mo.
Mobile	Ala.
Mogadore	Ohio.
Mondel	N. M.
Monmouth Beach	N. J.
Monroe	Mich.
Montclair	N. J.
Montgomery	Ala.
Montville	Conn.
Moore	Pa.
Moore	Texas.
Moorhead	Miss.
Moscow	Ohio.
Morgantown	W. Va.
Mt. Airy	Pa.
Mt. Clemens	Mich.
Mt. Holly	N. J.
Mt. Joy	Pa.
Mt. Pleasant	Pa.
Mt. Pleasant	Texas.
Mt. Riley	N. M.
Mt. Vernon	Texas.
Mt. Washington	Md.
Mt. Winans	Md.
Muncie	Ind.
Municipal Airport	
Memphis	Tenn.
Muskogee	Okla.
Muscle	Ala.
Myndus	N. M.

Town	State
Mystic	Conn.
Naco	Ariz.
Nacogdoches	Texas.
Nash	Texas.
Nashua	N. H.
Nashville	Tenn.
Natick	Mass.
Naugatuck	Conn.
Navasota	Texas.
U. S. Navy Yard (Phila.)	Pa.
Neptune	N. J.
Netherwood	N. J.
New Albany	Ind.
Newark	Del.
Newark	N. J.
New Bedford	Mass.
New Boston	Texas.
New Braunfels	Texas.
New Brighton	Pa.
New Britain	Conn.
New Brunswick	N. J.
New Haven	Conn.
Newburgh Heights Village	Ohio.
Newburyport	Mass.
New Castle	Del.
Newcastle	Texas.
Newell	W. Va.
New London	Conn.
Newman	N. M.
New Market	N. J.
New Orleans	La.
New Philadelphia	Ohio.
Newport	R. I.
Newport	Ky.
New Richmond	Ohio.
New Rochelle	N. Y.
New So. Memphis	Tenn.
Newtown	Conn.
Newton	Kan.
Newton	Mass.
New York	N. Y.
New York Mills	N. Y.
Niagara Falls	N. Y.
Nickerson	Neb.
Niles	Ohio.
Nixon	N. J.
Nixon	Texas.
Nogales	Ariz.
Noconnah	Tenn.
Nordheim	Texas.
Norfolk	Neb.
Noria	N. M.
Norman	Okla.
Normandy	Mo.
Norristown	Pa.
North Asbury Park	N. J.
North Bergen	N. J.
No. Birmingham	Ala.
North Canton	Ohio.
North Haven	Conn.
No. Kansas City	Mo.
No. Little Rock	Ark.
North Madison	Ohio.
North Memphis	Tenn.
North Mesa	Ariz.
North Platte	Neb.
North Side	Pa.
No. Tonawanda	N. Y.
North Wales	Pa.
Norton	Ariz.
Norwalk	Conn.
Norwich	Conn.
Norwood	Mass.
Norwood	Ohio.
Nutley	N. J.
Oakland	Calif.
Oakland	Md.

Town	State
Oakland	Pa.
Oak Lane	Pa.
Oakley	Ohio.
Oaks	Pa.
Oakville	Conn.
Oakwood	Mich.
Oberlin	Ohio.
Ocean Grove	N. J.
Ocean Springs	Miss.
Ochoa	Ariz.
Okemah	Okla.
Oklahoma City	Okla.
Okmulgee	Okla.
Old Bridge	N. J.
Old Orchard	Mo.
Olden	Texas.
Olney	Pa.
Olney	Texas.
Omaha	Neb.
Orange	Conn.
Orange	N. J.
Orange	Texas.
394 Orange Grove	Miss.
Orogrande	N. M.
Ottawa	Kan.
Ovalo	Texas.
Overbrook	Pa.
Overland	Mo.
Overlea	Md.
Overton	Texas.
Owensboro	Ky.
Owosso	Mich.
Oxford	Pa.
Paducah	Texas.
Painesville	Ohio.
Palestine	Texas.
Palmer	Texas.
Palo Verde	Ariz.
Pampa	Texas.
Paris	Ky.
Paris	Texas.
Parkersburg	W. Va.
Parlin	N. J.
Parma	N. M.
Parma	Ohio.
Pasadena	Texas.
Pascagoula	Miss.
Passaic	N. J.
Pass Christian	Miss.
Pass Cut	Ala.
Pastura	N. M.
Patagonia	Ariz.
Paterson	N. J.
Pattonville	Mo.
Paulsboro	N. J.
Pauls Valley	Okla.
Pawhuska	Okla.
Pawnee	Okla.
Pawtucket	R. I.
Peabody	Mass.
Pearsall	Texas.
Pencoyd	Pa.
Perry	Ohio.
Perry	Okla.
Perryton	Texas.
Peoria	Ill.
Perth Amboy	N. J.
Petty	Texas.
Pharr	Texas.
Phenix City	Ala.
Philadelphia	Pa.
Phillipsburg	N. J.
Phoenix	Ariz.
Phoenixville	Ala.
Phoenixville	Pa.
Picacho	Ariz.
Picton	N. J.
Piedra	Ariz.
Pima	Ariz.

Town	State
Pine Bluff	Ark.
Pine Lawn	Mo.
Pipestone	Minn.
Pitcairn	Pa.
Pittsburgh	Pa.
Pittsburg	Texas.
Plainfield	N. J.
Plainview	Texas.
Plainville	Conn.
Plantsville	Conn.
Pleasantville	Mich.
Point Breeze	Md.
Point Breeze	Pa.
Point Pleasant	N. J.
Ponca City	Okla.
Pontiac	Mich.
Port Arthur	Texas.
Port Chester	N. Y.
Port Huron	Mich.
Portland	Ore.
Port Monmouth	N. J.
Port Reading	N. J.
Port Richmond	Pa.
Portsmouth	Ohio.
Post	Texas.
Pottstown	Pa.
Pottsville	Pa.
Poughkeepsie	N. Y.
Pratt City	Ala.
Price Hill	Ohio.
Providence	R. I.
Pueblo	Colo.
Putnam	Conn.
Putnam	Texas.
Pyra	N. M.
Quakertown	Pa.
Quanah	Texas.
Queen Creek	Ariz.
Quincy	Ill.
Quincy	Mass.
Rahway	N. J.
Raleigh	N. C.
Ramona Park	Mo.
Ranger	Texas.
Rapid City	S. D.
Raso	Ariz.
Ravenna	Ohio.
Ray Junction	Ariz.
Raymondville	Texas.
Reading	Mass.
Reading	Ohio.
Reading	Pa.
Reeders	Ala.
Red Bank	N. J.
Redford	Mich.
Red Fork	Okla.
Red Rock	Ariz.
Regay	Ariz.
Revere	Mass.
Rhome	Texas.
Richland	Texas.
Richmond	Texas.
Richmond Heights	Mo.
Richmond Hill	N. Y.
Ridgefield	N. J.
Riesel	Texas.
Rillito	Ariz.
Riffman	Ohio.
River Rouge	Mich.
Riverside	N. J.
Riviera	Texas.
Roberston	Mo.
Robstown	Texas.
Rochester	N. Y.
Rockland	Mass.
Rockwall	Texas.
Rocky River	Ohio.
Rodeo	N. M.
Roll	Ariz.
Rome	Ga.
Roscoe	Texas.
Rosebud	Texas.
Rosedale	Kan.
Rosedale	N. Y.
Roselle	N. J.
Rosenberg	Texas.
Roseville	Mich.
Rowena	Texas.
Roxborough	Pa.
Roxbury	Mass.
Royal Oak	Mich.
Roversford	Pa.
Royse City	Texas.
Rumson	N. J.
Runge	Texas.
Rusk	Texas.
Rutherford	N. J.
Sabinal	Texas.
Sacate	Ariz.
Saddle	Ariz.
Safford	Ariz.
Sagimaw	Mich.
Sahuarita	Ariz.
St. Bernard	Ohio.
St. Charles	Mo.
St. Elmo	Ala.
St. Joseph	Mo.
St. Louis	Mo.
St. Paul	Minn.
Salem	Mass.
Salem	N. J.
Salem	Ohio.
Salina	Kan.
Salisbury	N. C.
395 Salt Lake City	Utah.
San Angelo	Texas
San Antonio	Texas.
San Benito	Texas.
San Carlos	Ariz.
San Francisco	Calif.
San Juan	Texas.
San Marcos	Texas.
San Pedro	Ariz.
San Simon	Ariz.
Sand Springs	Okla.
Sanger	Texas.
Sapulpa	Okla.
Saybrook	Ohio.
Sayreville	N. J.
Schulenberg	Texas.
Seabright	N. J.
Sealy	Texas.
Seattle	Wash.
Sebring	Ohio.
Secaucus	N. J.
Seguin	Texas.
Sellersville	Pa.
Selma	Ala.
Seminole	Okla.
Sentinel	Ariz.
Separ	N. M.
Sespe	Ariz.
Sewaren	N. J.
Sewickley	Pa.
Seymour	Conn.
Seymour	Texas.
Shaker Heights	Ohio.
Shamrock	Texas.
Shawnee	Okla.
Sheffield	Mo.
Shelton	Conn.
Shepherd	Texas.
Sherman	Texas.
Shreveport	La.
Shrewsbury	Mo.
Shrewsbury	N. J.
Silverton	Ohio.
Sinton	Texas.
Sioux City	Iowa.
Sioux Falls	S. D.
Skidmore	Texas.
Slaton	Texas.
Slidell	La.
Smiley	Texas.
Solomon	Ariz.
Somerton	Pa.
Somerville	Mass.
Somerville	N. J.
So. Amboy	N. J.
South Bend	Ind.
So. Boston	Mass.
So. Braintree	Mass.
So. Charleston	W. Va.
So. Haven	Mich.
Southington	Conn.
South Kearny	N. J.
So. Manchester	Conn.
South Norwalk	Conn.
So. Omaha	Nebr.
So. Orange	N. J.
So. Plainfield	N. J.
So. River	N. J.
South Side	Pa.
Speedway	Ind.
Spokane	Wash.
Spotswood	N. J.
Spring City	Pa.
Springfield Gardens	N. Y.
Springfield	Ill.
Springfield	Mass.
Springfield	Mass.
Springfield	Mo.
Springfield	Ohio.
Spring Lake	N. J.
Stamford	Conn
Stamford	Texas.
Stanton	Texas.
Stanwix	Ariz.
Statesville	N. C.
Steins	N. M.
Stelton	N. J.
Stephenville	Texas.
Steubenville	Ohio.
Stillwater	Okla.
Stockham	Ariz.
Stoneham	Mass.
Stoughton	Mass.
Stoval	Ariz.
Stratford	Conn.
Strauss	N. M.
Strawn	Texas.
Sugarland	Texas.
Sulphur	Okla.
Sulphur Springs	Texas.
Summerdale	Pa.
Suspension Bridge	N. Y.
Sweetwater	Texas.
Swissvale	Pa.
Syracuse	N. Y.
Tabor	Pa.
Tacony	Pa.
Taft	Texas.
Tanque	Ariz.
Tarentum	Pa.
Taunton	Mass.
Tempe	Ariz.
Tempe Pumping Plant	Ariz.
Tenille	Texas.
Tenafly	N. J.
Tenaha	Texas.
Terrell	Texas.
Texarkana	Texas.
Texas City	Texas.
Thatcher	Ariz.
Theodore	Ala.

Town	State	Town	State	Town	State
Thomas	Ala.	Wagoner	Okla.	Wewoka	Okla.
Thomaston	Conn.	Wahpeton	N. D.	Weymouth	Mass.
Thomasville	N. C.	Wakefield	Mass.	Wharton	Texas.
Three Rivers	N. M.	Walbrook	Md.	Whetstone	Ariz.
Three Rivers	Texas.	Waller	Texas.	White Plains	N. Y.
Timpson	Texas.	Wallingford	Conn.	Whitesboro	Texas.
Tioga	Pa.	Wallington	N. J.	Whitewright	Texas.
Tioga	Texas.	Wallis	Texas.	Wichita	Kan.
Toledo	Ohio.	Walton	Ky.	Wichita Falls	Texas.
Tolleson	Ariz.	Waltham	Mass.	Wickatunk	N. J.
Tombstone	Ariz.	Warners	N. J.	Wilkinsburg	Pa.
Tonawanda	N. Y.	Warren	Ohio.	Willcox	Ariz.
Tonkawa	Okla.	Washington	D. C.	Willoughby	Ohio.
Topaz	Aris.	Washington	Pa.	Willow Springs	Texas.
Topeka	Kan.	Waterbury	Conn.	Wills Point	Texas.
Torrance	N. M.	Watertown	Mass.	Wilmerding	Pa.
Torrington	Conn.	Watertown	Conn.	Wilmington	Del.
Torresdale	Pa.	Watertown	S. D.	Wilmington	N. C.
Tovrea	Ariz.	Waterville	Conn.	Winchester	Ky.
Trawick	Texas.	Watervliet	Mich.	Winchester	Mass.
Trent	Texas.	Water Witch	N. J.	Windom	Texas.
Trenton	N. J.	Waxahachie	Texas.	Winfield	Kan.
Trinity	Texas.	Weatherford	Texas.	Winfield	Texas.
Tucson	Ariz.	Webster Groves	Mo.	Winnsboro	Texas.
Tularosa	N. M.	Weehawken	N. J.	Winkelman	Ariz.
Tulsa	Okla.	Weimar	Texas.	Winston Salem	N. C.
Tuscaloosa	Ala.	Weleetka	Okla.	Winters	Texas.
Tuscola	Texas.	Wellington	Texas.	Winton Place	Ohio.
Tuxedo Park	Mo.	Wellston	Mo.	Wissinoming	Pa.
Tyler	Texas.	Wellsville	Ohio.	Woburn	Mass.
Ubrichsville	Ohio.	Wellton	Ariz.	Woodbridge	N. J.
Union	N. J.	Wenonah	Ala.	Woodridge	N. J.
Union Beach	N. J.	West	Texas.	Woodlawn	Ala.
Union City	N. J.	Westbrook	Texas.	Woodville	Texas.
Unionville	Conn.	W. Carrollton	Ohio.	Woonsocket	R. I.
University City	Mo.	West Chester	Pa.	Worcester	Mass.
Urbana	Texas.	West End	Ala.	Wortham	Texas.
Utica	N. Y.	West End	N. J.	Wyandotte	Mich.
Uvalde	Texas.	West End	Pa	Wylam	Ala.
Valley City	N. D.	West Fargo	N. D.	Wyoming	Ohio.
Valley Junction	Iowa	Westfield	N. J.	Yankton	S. D.
Valley Park	Mo.	West Hartford	Conn.	Yoakum	Texas.
Van Alstyne	Texas.	West Haven	Conn.	Yonkers	N. Y.
Vaughn	N. M.	Westhoff	Texas.	York	Ariz.
Venice	Ill.	West Homestead	Pa.	York	Pa.
Vernon	Texas.	West Orange	N. J.	Yorklyn	Del.
Versailles	Ky.	West Park	Ohio.	Yorktown	Ind.
Victoria	Texas.	Westport	Md.	Yorktown	Texas.
Vineland	N. J.	West Roxbury	Mass.	Youngstown	Ohio.
Vinita	Okla.	West Tulsa	Okla.	Ypsilanti	Mich.
Waco	Texas.	Westwego	La.	Yuma	Ariz.
Wadsworth	Ohio.	Westwood	Ohio.		
Waelder	Texas.	Wetumka	Okla.		

Town	State	Town	State	Town	State
397 Aberdeen	Wash.	Busch	Mont.	D'Aste	Mont.
Acampo	Cal.	Calcium	Mont.	Davenport	Cal.
Accola	Mont.	Calcium Spur	Mont.	Dawson	Mont.
Addy	Wash.	Camona	Mont.	De Borgia	Mont.
Agnew	Cal.	Campbell	Cal.	Deer Lodge	Mont.
Albany	Ore.	Camp Creek	Mont.	Deer Park	Mont.
Albright	Mont.	Camp Inis	Cal.	Deever	Mont.
Alcazar	Mont.	Canyon	Mont.	Deevers	Mont.
Alderpoint	Cal.	Capitola	Cal.	Dehart	Mont.
Alma	Cal.	Carbella	Mont.	Delta	Utah
Almira	Wash.	Cardinal	Mont.	Dempsey	Mont.
Alviso	Cal.	Cargill	Mont.	Desmet	Mont.
Amazon	Mont.	Carpenter	Mont.	Dewey	Utah
American Falls	Ida.	Carson City	Nev.	Dillon	Mont.
Amsterdam	Mont.	Casmalia	Cal.	Divide	Mont.
Anacortes	Wash.	Cedar City	Utah	Dodson	Mont.
Anceney	Mont.	Cedric	Mont.	Donald	Mont.
Anceny	Mont.	Centralia	Wash.	Dorres	Cal.
Antioch	Cal.	Champion	Mont.	Dorris	Cal.
Arlington	Wash.	Chapman	Mont.	398 Dover	Mont.
Armstead	Mont.	Chehalis	Wash.	Dowd	Mont.
Arnold	Mont.	Chelan	Wash.	Drexel	Mont.
Aromas	Cal.	Chewalah	Wash.	Duffy	Mont.
Ashmore	Mont.	Chicory	Mont.	Duncan Mills	Cal.
Ashton	Ida.	Childs	Mont.	Du Pont	Wash.
Ashuelot	Mont.	Christina	Mont.	Durant	Mont.
Ashueet	Mont.	Church	Mont.	East Helena	Mont.
Atkins	Mont.	Cisco	Cal.	East Portal	Mont
Austin	Mont.	Citadel	Mont.	Eddy	Mont
Balmont	Mont.	Clancey	Mont.	Eden	Ida.
Bandon	Ore.	Clancy	Mont.	Edilou	Mont
Banks	Ida.	Clarkia	Ida.	Edilow	Mont.
Barber	Mont.	Clarkston	Mont.	Electric	Mont.
Barron	Mont.	Clarkston	Wash.	Elk Grove	Cal.
Bass	Mont	Clayton	Wash.	Elk River	Ida.
Bassett	Ida.	Clearfield	Utah	Ellensburg	Wash.
Baxter	Mont.	Clear Lake Gardens	Cal.	Elma	Wash.
Bean	Mont.	Clear Lake Lodge	Cal.	El Portal	Cal.
Belknap	Mont	Clear Lake Villa	Cal.	Elso	Mont.
Belmont	Cal.	Cle Elum	Wash.	Emerald Bay Jct.	Cal.
Belton	Mont.	Cloverdale	Cal.	Endicott	Wash.
Ben Lomond	Cal.	Clow	Mont.	Enumclaw	Wash.
Bennett	Mont.	Cobden	Mont.	Erlice	Mont.
Bernice	Mont.	Coeur D'Alene	Ida.	Eureka	Utah.
Bethany	Cal.	Coffee Creek	Mont.	Eustice	Mont.
Bickel	Mont.	Colfax	Cal.	Everett	Wash.
Bieber	Cal.	Colfax	Wash.	Fairfield	Wash.
Big Trees	Cal.	Collins	Mont.	Fairview	Mont.
Bing	Mont.	Colma	Cal.	Fanalulu	Mont.
Bing Spur	Mont.	Colterville	Mont.	Farmington	Cal.
Birdseye	Mont.	Columbia Falls	Mont.	Farmington	Utah.
Blacks Creek	Ida.	Columbus	Mont.	Farmington	Wash.
Blakstone	Mont.	Colville	Wash.	Farnsworth	Utah
Blackwood	Mont.	Como	Mont.	Felton	Cal.
Blossburg	Mont.	Congress Jct	Cal.	Fields	Mont.
Boise	Ida.	Coombs	Mont.	Fife	Mont.
Bonners Ferry	Ida.	Coquille	Ore.	Fillmore	Utah.
Bonneville	Ore.	Coram	Mont.	Finlen	Mont.
Borax	Mont.	Corbin	Mont.	Flood	Mont.
Boulder Creek	Cal.	Cordelia	Cal.	Flowerce	Mont.
Bovill	Ida.	Cordova	Mont.	Forest Grove	Ore.
Bowdoin	Mont.	Cornish	Utah	Fort Belknap	Mont.
Brewer	Mont.	Corvallis	Ore.	Ft. Browning	Mont.
Brewster	Wash.	Cottage Grove	Ore.	Ft. Harrison	Mont.
Brigham	Utah	Coulee Dam	Wash.	Ft. Lewis	Wash.
Brisbon	Mont.	Covelo	Cal.	Fortine	Mont.
Broadwater	Mont.	Cowan	Mont.	Four Range	Mont.
Brooks	Mont.	Coyote	Cal.	Frayer	Mont.
Bruno	Mont.	Crane	Ore.	Frost	Mont.
Bryson	Mont.	Crescent City	Cal.	Fuller	Mont.
Buell	Mont.	Crows Landing	Cal.	Furlong	Mont.
Buffalo	Mont.	Cullen	Mont.	Gallatin	Mont.
Buford	Mont.	Cupertino	Cal.	Gallatin Gateway	Mont.
Bundy	Mont.	Cur	Mont.	Galt	Cal.
Burgoyne	Mont.	Cusick	Wash.	Garberville	Cal.
Burke	Ida.	Dalkena	Wash.	Garfield	Wash.
Burke	Mont.	Dallas	Ore.	Garland	Utah.
Bulingame	Cal.	Dalny	Mont.	Garneill	Mont.
Burlington	Wash.	Danvert	Mont.	Gaspard	Mont.

Town	State	Town	State	Town	State
Gearing	Mont.	Kellogg	Ida.	Mission	Mont.
Geber	Mont.	Kelseyville	Cal.	Modena	Utah.
Gerber	Mont.	Kelso	Wash.	Moiese	Mont.
Gennessee	Ida.	Kendrick	Ida.	Moise	Mont.
Geysersville	Cal.	Kent	Wash.	Molt	Mont.
Gibbs	Ida.	Kewan	Mont.	Montana City	Mont.
Gibson	Mont.	Keyshaw	Mont.	Monte Rio	Cal.
Gilman	Mont.	Keyes	Cal.	Montesano	Wash.
Gilroy	Cal.	Klamath	Cal.	Monte Vista	Cal.
Gilroy	Mont.	Klamath Falls	Ore.	Moore	Mont.
Glacier Park	Mont.	Kremlin	Mont.	Morel	Mont.
Glengarry	Mont.	Kyle	Mont.	Morganhill	Cal.
Glenwood	Cal.	Kyle Spur	Mont.	Moscow	Ida.
Gold Coin	Mont.	La Crosse	Wash.	Moulter	Mont.
Golden	Mont.	Lagunitas	Cal.	Mountain View	Cal.
Goodlale	Mont.	Lakeport	Cal.	Mount Hermon	Cal.
Goodman	Mont.	Lakeside	Mont.	Mount Vernon	Wash.
Gordon	Mont.	Lake Tahoe	Cal.	Moyne	Mont.
Gorus	Mont.	Larkspur	Cal.	Muir	Mont.
Grace	Mont.	Lathrop	Cal.	Mullan	Ida.
Granjo	Mont.	Lathrop	Mont.	Myers	Mont.
Granje Spur	Mont.	Laurel	Mont.	Myers Falls	Wash.
Grass Valley	Mont.	Laurel Dell	Cal.	Myres	Mont.
Greenwood	Mont.	Leadboro	Mont.	Nagos	Mont.
Groveland	Mont.	Lebanon	Ore.	Nagus	Mont.
Guerneville	Cal.	Lennep	Mont.	Napa	Cal.
Hackney	Mont.	Le Triumph	Cal.	Napa Jct	Cal.
Haman	Mont.	Lewark	Mont.	Nashua	Mont.
Hanover	Mont.	Lewiston	Ida.	Neah Bay	Wash.
Hansen	Ida.	Liberal	Mont.	Neal	Mont.
Hardy	Mont.	Liscum	Mont.	Nephi	Utah.
Harlowton	Mont.	Live Oak	Cal.	Newberg	Ore.
Harlowtown	Mont.	Lockwood	Mont.	Newcomb	Mont.
Harrisville	Utah.	Lodi	Cal.	New Dorsey	Mont.
Haskell	Mont.	Logan	Utah.	New Plymouth	Ida.
Hayes	Mont.	Lolman	Mont.	Newport	Wash.
Hayward	Cal.	Longview	Wash.	Newton	Mont.
Healdsburg	Cal.	Lookout	Mont.	Newton	Mont.
Heath	Mont.	Lookout	Mont.	Neydel	Mont.
Heela	Ida.	Lorenzo	Cal.	Nine Mile	Mont.
Hedges	Mont.	Los Altos	Cal.	Northport	Wash.
Hedgesville	Mont.	Los Gatos	Cal.	Nyssa	Ore.
Hellgate	Mont.	Los Molmos	Mont.	Oaksdale	Wash.
Henderson	Mont.	Louisville	Mont.	Odair	Wash.
Heron	Mont.	Lowath	Mont.	Oka	Mont.
Hess	Mont.	Lowry	Mont.	Okanogan	Wash.
Hillcrest	Mont.	Lynden	Wash.	Olney	Mont.
Highview	Mont.	Lyoth	Cal.	Olympia	Wash.
Higer	Mont.	McClain	Mont.	Omak	Wash.
Hilsboro	Ore.	McClave	Mont.	Oneida	Mont.
Hoiker	Mont.	McCloud	Cal.	Onida	Mont.
Holland	Mont.	McDonald	Mont.	Orchard	Ida.
Holy City	Cal.	McManaville	Ore.	Orchard	Mont.
Homestake	Mont.	Mequarrie	Mont.	Oregon City	Ore.
Honeyville	Utah.	Mabel	Ida.	Oroville	Wash.
Highland	Cal.	Manchester	Mont.	Orwell	Mont.
Hopers	Mont.	Marcus	Wash.	Oswego	Mont.
Hospital	Wash.	Mares	Mont.	Ozan	Mont.
Howard	Mont.	Mares Spur	Mont.	Pacwoods	Mont.
Howell Spur	Mont.	Martin	Mont.	Palo Alto	Cal.
Huff	Ida.	Martinez	Cal.	Palouse	Wash.
Hughes	Mont.	Matheson	Cal.	Paradise	Mont.
Hyde Park	Utah.	Matthews	Mont.	Park City	Utah.
Hyman	Mont.	Mason City	Wash.	Parott Spur	Mont.
Ingram	Utah.	Maxwell	Cal.	Pasco	Wash.
Inco	Wash.	Mayfield	Cal.	Pateum	Mont.
Ionia	Mont.	Melstone	Mont.	Pateum	Mont.
Ione	Mont.	Menard	Mont.	Patterson	Mont.
Ir	Wash.	Menlo Park	Cal.	Payson	Utah.
Iron	Mont.	Merino	Mont.	Penfield	Mont.
Irrigon	Mont.	Metaline Falls	Wash.	Penwell	Mont.
Irvington	Cal.	Mid Cannon	Mont.	Penwell Spur	Mont.
Ivaton	Cal.	Mid Canon	Mont.	Phillipsburg	Mont.
Ivay	Mont.	Millbrae	Cal.	Pineview	Ida.
Ivinhoe	Cal.	Milner	Ida.	Pittsburg	Cal.
Ivoney	Mont.	Milpitas	Cal.	Placer	Mont.
Ivophine	Mont.	Milton	Cal.	Plaine	Mont.
Ivyville	Utah.	Minehana	Mont.	Plains	Mont.
		Misko	Mont.	Plateau	Mont.

Town	State	Town	State	Town	State
Pleasant Grove	Utah.	Schley	Mont.	Tracy	Cal.
Plevna	Mont.	Scotia	Cal.	Trail Creek	Mont.
Plummer	Ida.	Seabright	Cal.	Trask	Mont.
Pomeroy	Wash.	Sebastapol	Cal.	Tregloan	Mont.
Pompeys Pillar	Mont.	Sedro-Woolley	Wash.	Tremonton	Utah.
Portage	Utah.	Seigling	Mont.	Trenton	Utah.
Portal	Mont.	Selkirk	Mont.	Tresk	Mont.
Port Angeles	Wash.	Selmes	Mont.	Tres Pinos	Cal.
Portola	Cal.	Sheffield	Mont.	Trinidad	Cal.
Port Townsend	Wash.	Shelton	Wash.	Trout	Ida.
Post	Mont.	Shoni	Ida.	Trout Creek	Mont.
Potlatch	Ida.	Silverton	Ore.	Troy	Ida.
Potter	Mont.	Simla	Mont.	Truckee	Cal.
Powers	Mont.	Sinclair	Mont.	Tucker	Mont.
Priest River	Ida.	Sippie	Mont.	Tunis	Mont.
Primrose	Mont.	Sixteen	Mont.	Turah	Mont.
Prosser	Wash.	Skones	Mont.	Turner	Mont.
Providence	Utah.	Skyline	Mont.	Tuscor	Mont.
Pullman	Wash.	Slayton	Mont.	Tusler	Mont.
Puyallup	Wash.	Sloan	Mont.	Tusley	Mont.
Quart	Mont.	Smithfield	Utah.	U. S. Navy Yard (Bremerton).	Wash.
Quartz	Mont.	Snohomish	Wash.	Vail	Wash.
Quebec	Mont.	Snoqualmie	Wash.	Valencia	Mont.
Quincy	Cal.	Snowden	Mont.	Vananda	Mont.
Quincy jct	Cal.	Sonora	Cal.	Vandalia	Mont.
Quinns	Mont.	Soquel	Cal.	Vendome	Mont.
Rainbow	Mont.	Soudan	Mont.	Vina	Cal.
Ravenna	Mont.	So. San Francisco	Cal.	Vincent	Mont.
Redwood City	Cal.	Spain	Mont.	Virgelle	Mont.
Reedsport	Ore.	Spanish Fork	Utah.	Wade	Mont.
Reid Spur	Mont.	Sphinx	Mont.	Wagner	Mont.
Rekap	Mont.	Spion Kop	Mont.	Wallace	Ida.
Reno	Nev.	Spire Rock	Mont.	Wapato	Wash.
Renova	Mont.	Spirit Lake	Ida.	Ward	Mont.
Renton	Wash.	Spring Gulch	Mont.	Washington	Cal.
Rexford	Mont.	Spring Hill	Mont.	Washtucna	Wash.
Riceville	Mont.	Springville	Utah.	Wataga	Mont.
Richards	Mont.	Spurling	Mont.	Waverly	Wash.
Richmond	Utah.	Square Butte	Mont.	Wayne	Mont.
Riddle	Mont.	Stanley	Mont.	Weed	Mont.
Riebling	Mont.	Stanley Spur	Mont.	Weeksville	Mont.
Rio Vista	Cal.	Stanwood	Wash.	Welch	Mont.
Riverdale	Mont.	Starrhs	Ida.	Wellsville	Utah.
Riverside	Mont.	Starrhs Ferry	Ida.	Wendell	Ida.
400 Rivulet	Mont.	Steilacoom	Wash.	Westfall	Mont.
Rockford	Wash.	Steptoe	Wash.	West Gallatin	Mont.
Rock Island	Ida.	Stockett	Mont.	West Lake	Mont.
Rocklin	Cal.	Stone	Mont.	West Lewistown	Mont.
Rosalia	Wash.	Storey	Mont.	Wheatland	Cal.
Roseburg	Ore.	Story	Mont.	White	Mont.
Roslyn	Wash.	Stuart	Mont.	Whitepine	Mont.
Ross	Cal.	Suffolk	Mont.	White Sulphur Springs.	Mont.
Rossi	Cal.	Sumatra	Mont.	Wickes	Mont.
Russell	Mont.	Summit	Mont.	Wickett	Mont.
St. John	Wash.	Sumner	Wash.	Wilder	Mont.
St. Marias	Ida.	Sunnyside	Wash.	Willard	Utah.
Saco	Mont.	Sunnyvale	Cal.	Winifred	Mont.
Salem	Ore.	Sun River	Mont.	Winnecook	Mont.
Salida	Cal.	Swift	Mont.	Winston	Mont.
Sampson	Mont.	Taft	Mont.	Wisner	Mont.
San Bruno	Cal.	Tahoma	Cal.	401 Witney	Mont.
San Carlos	Cal.	Tale	Mont.	Wolroth	Mont.
Sand Coulee	Mont.	Tammany	Mont.	Wood	Ida.
Sand point	Ida.	Tampico	Mont.	Wood	Mont.
Sandy	Utah.	Tarkio	Mont.	Woodlin	Mont.
San Joaquin	Cal.	Tehama	Cal.	Woodside	Mont.
San Jose	Cal.	Tekon	Wash.	Woodville	Mont.
San Juan	Cal.	Teton	Mont.	Worley	Ida.
San Martin	Cal.	Thelma	Mont.	Wright	Cal.
San Mateo	Cal.	Thornton	Wash.	Wright	Mont.
Santa Clara	Cal.	Tiburon	Cal.	Yakima	Wash.
Santa Cruz	Cal.	Tiger Butte	Mont.	Yegan	Mont.
Santa Rosa	Cal.	Tillamook	Ore.	Yolo	Cal.
Sappington	Mont.	Toll House	Cal.	Zamora	Cal.
Saratoga	Cal.	Toole	Mont.	Zurich	Mont.
Sargent	Cal.	Toppenish	Wash.		
Savoy	Mont.	Torbet	Mont.		
Sayre	Mont.	Toston	Mont.		

402 *Gerard Exhibit 4*

Before the Interstate Commerce Commission

I. & S. Docket M-247

Proportional Concentration and Distribution Rates

STATEMENT SHOWING VOLUME OF ANNUAL TRAFFIC INVOLVED[1]—TERRITORY INVOLVED IN SUSPENDED TARIFFS

	Three territories consolidated	Wisconsin tariff territory	Chicago metropolitan territory	Indiana tariff territory
Hundredweight handled:				
Inbound	789,416	92,800	384,418	312,198
Outbound	1,784,112	213,964	883,636	586,512
Total	2,573,528	406,764	1,268,054	898,710
Charges paid motor carriers	$624,204.90	$133,119.56	$303,977.36	$187,111.98
Average charge per hundredweight	24.25¢	32.73¢	23.97¢	20.82¢

[1] Based on six months 1937 way-bill analysis.

Total traffic concentrated or distributed through Chicago

Hundredweight handled	3,526,784
Charges paid motor carriers	$1,178,589.52
Average charge per hundredweight	33.42¢

Exhibit No. 5

EXHIBIT H

Statement of proportional and local rates (in cents per 100 pounds except as shown) maintained by railroads on various commodities between various points

From	To	Commodity or class	Local	Proportional	Tariff authority	Tariff reference
Bartlesville, Okla	Houston, Tex	Zinc Spelter	39	29	Peel, ICC 2939	"Rate applies only on traffic for trans-shipment via Panama Canal to Pacific Coast Points of the United States and British Columbia."
Kansas City, Mo	Houston, Tex	Iron or Steel Angles	69	28	Peel, ICC 2719 SLSF ICC 10494	"Applicable only on traffic moving beyond in connection with the Gulf Pacific Line or The Luckenbach Gulf Steamship Co., Inc., through the Panama Canal and destined Pacific Coast Ports—."
Minneapolis, Minn	Decatur, Ill	Wheat	26	15	Kipp, A-2743	"Proportional rate on traffic destined to points east of the Illinois-Indiana State line as described in W. T. L. T. O. 1-B, L. E. Kipp's I. C. C. A-1934."
Kansas City, Mo	Green Bay, Wis	Wheat	34	15	Kipp, A-2743	Proportional rate will only apply on direct shipments to Green Bay, Wis., which are reforwarded from elevators at Green Bay, Wis., by vessel to—Port Huron, Mich.—Buffalo, N.Y.— See Page 7 herein.
San Francisco, Cal	Pittsburgh, Pa	Lumber	88½	77	Kipp, 1408	"Item 994, Subject: Application of Trans-shipment Rates. Rates from points for which trans-shipment rates are provided, apply only on shipments from ocean ports in California north of San Francisco Bay, from Brooklings, Ore., and from ports on Coos Bay, Ore., when such shipments are received from ocean carriers. Trans-shipment rates named in this tariff apply also on lumber, and the products of lumber named, if stored, yarded or manufactured in transit, and before delivery to rail carriers at points from which the trans-shipment rates named above apply."

Statement of proportional and local rates (in cents per 100 pounds except as shown) maintained by railroads on various commodities between various points—Continued

From	To	Commodity or class	Local	Proportional	Tariff authority	Tariff reference
San Francisco, Cal	Cincinnati, Ohio	Lumber	85	73½	Kipp, 1408	"Item 994, Subject: Application of Trans-shipment Rates. Rates from points for which trans-shipment rates are provided, apply only on shipments from ocean ports in California north of San Francisco Bay, from Brooklings, Ore., and from ports on Coos Bay, Ore., when such shipments are received from ocean carriers. Trans-shipment rates named in this tariff apply also on lumber, and the products of lumber named, if stored, yarded or manufactured in transit, and before delivery to rail carriers at points from which the trans-shipment rates named above apply."
San Francisco, Cal	Atlanta, Ga	Lumber	87½	76	Kipp, 1408	"Item 994, Subject: Application of Trans-shipment Rates. Rates from points for which trans-shipment rates are provided, apply only on shipments from ocean ports in California north of San Francisco Bay, from Brooklings, Ore., and from ports on Coos Bay, Ore., when such shipments are received from ocean carriers. Trans-shipment rates named in this tariff apply also on lumber, and the products of lumber named, if stored, yarded or manufactured in transit, and before delivery to rail carriers at points from which the trans-shipment rates named above apply."
San Francisco, Cal	Memphis, Tenn	Lumber	72	60½	Kipp, 1408	"Item 994, Subject: Application of Trans-shipment Rates. Rates from points for which trans-shipment rates are provided, apply only on shipments from ocean ports in California north of San Francisco Bay, from Brooklings, Ore., and from ports on Coos Bay, Ore., when such shipments are received from ocean carriers. Trans-shipment rates named in this tariff apply also on lumber, and the products of lumber named, if stored, yarded or manufactured in transit, and before delivery to rail carriers at points from which the trans-shipment rates named above apply."

404 San Francisco, Cal.	Ft. Worth, Tex	Lumber	62½	51	Kipp, 1408	"Item 994, Subject: Application of Trans-shipment Rates. Rates from points for which trans-shipment rates are provided, apply only on shipments from ocean ports in California north of San Francisco Bay, from Brooklings, Ore., and from ports on Coos Bay, Ore., when such shipments are received from ocean carriers. Trans-shipment rates named in this tariff apply also on lumber, and the products of lumber named, if stored, yarded, or manufactured in transit, and before delivery to rail carriers at points from which the trans-shipment rates named above apply."
Decatur, Ala	Memphis, Tenn	Logs	13	8	Sou. ICC A-10639	These are termed "Reshipping rates." Transit rules and regulations cover several pages. The essence of them is that a certain portion of the in-bound tonnage must be reshipped via Southern Railway in order for the Reshipping rates to apply.
Tuscumbia, Ala	Memphis, Tenn	Logs	11½	6½	Sou. ICC A-10639	These are termed "Reshipping rates." Transit rules and regulations cover several pages. The essence of them is that a certain portion of the in-bound tonnage must be reshipped via Southern Railway in order for the Reshipping rates to apply.
Cherokee, Ala	Memphis, Tenn	Logs	8½	6	Sou. ICC A-10639	These are termed "Reshipping rates." Transit rules and regulations cover several pages. The essence of them is that a certain portion of the in-bound tonnage must be reshipped via Southern Railway in order for the Reshipping rates to apply.
Duluth, Minn	Minneapolis, Minn	Wheat	12	4½	Kipp, A-2743	Item 25-C (Sec. 1 (c)). On shipment of Ex-Lake whole grain—which arrive at—Duluth, Minn., by boat, shippers must certify that shipments were received by boat, and surrender of in-bound freight bills will not be required. The rates on ex-lake whole grain—to destination territory described in Items 30—will be those in effect on date shipment is tendered the rail carriers for shipment from—Duluth, Minn. Item 30. Application of Ex-Lake rates from Duluth, Minn. Proportional rate named in tariff will also apply on Ex-Lake Traffic from—Duluth, Minn., to all destinations named in tariff. See note 1. Note 1. Apply same proportional rates as shown herein from Duluth, Minn., to destinations shown in this item.

Statement of proportional and local rates (in cents per 100 pounds except as shown) maintained by railroads on various commodities between various points—Continued

From	To	Commodity or class	Local	Proportional	Tariff authority	Tariff reference
Cincinnati, Ohio	Indianapolis, Ind	Coal	None	114 net ton	CCC&StL ICC 8514	Item 1-B. Application of Rates. The rates contained herein on bituminous coal carloads, apply only on bituminous coal when arriving at—Cincinnati, Ohio—via the Ohio River, and will not apply from intermediate stations.
				283 gr. ton	N&W ICC 3172-B and 3177-B.	"When delivered to vessels which do not go outside the Capes of Virginia, excluding dumping, skidding, trimming, and leveling charges."
				263 gr. ton	N&W ICC 3172-B and 3177-B.	"When delivered to vessels destined to points outside the Capes of Virginia (including points on the Albemarle, Pamlico, and Currituck Sounds, or tributaries thereto), excluding dumping, skidding, trimming, and leveling charges."
Origin Groups 1 and 2	Norfolk, Va	Coal	262 net ton			
Origin Group 3	Norfolk, Va	Coal	276 net ton			
				257½ gr. ton	N&W ICC 3172-B and 3177-B.	"Cargo coal for export to foreign Countries."
				252 gr. ton	N&W ICC 3172-B and 3177-B.	"Upon evidence in form of certificate hereinafter shown that coal shipped hereunder has been placed in vessels destined to New England Ports and thence moved by rail from docks at the New England ports to destinations in Conn., Me., Mass., N. H., R. I., and Vermont." CERTIFICATE .....hereby certify that the coal covered by the attached bill of lading, shipping order, or shipping instructions was shipped from origins on or after Nov. 15, 1937, and was trans-shipped by—Railroad at (etc., etc.).

				156 net ton	PRR ICC A-2035, and F-1385.	"When for trans-shipment by vessels on the Great Lakes to points beyond." Note 2. "Rates named herein to Lake Erie Ports, for transshipment via Water will not apply on shipments moved via vessel to a second port and there transferred to other vessels and moved beyond the lake ports through waterways located wholly in New York State, nor will they apply on coal moved direct from the first port to points on such waterways beyond the Lake Ports." Note 4. "These rates will not apply on coal for local consumption at the ports named, nor in the industrial districts contiguous to the said ports, respectively, where there is no bona fide transportation beyond the ports by lake." Note 6. "Upon evidence in form of certificate hereinafter shown that cargoes coal shipped hereunder has been placed in vessels consigned to docks in the United States on Lake Superior or on west bank of Lake Michigan and thence moved by rail from such docks to interior destinations (either as coal or as briquettes produced from such coal at the docks) the rate will be two and one-half cents per net ton less than the rates herein specified." ($1.56 less 2½ produces the $153½ rate shown.
405	Pittsburgh Group.	Ashtabula Harbor, Ohio.	Coal	184	153½ net ton	PRR ICC A-2035, and F-1385.

CERTIFICATE

..... hereby certified that the coal or coal
(I or we)
briquettes covered by attached bill of lading, shipping order or shipping instructions were shipped from mines on or after November 15, 1937 and were trans-shipped by .....
(Name of rail-
at .....
road) (Name of port of trans-shipment to
into ..... that freight
vessel) (Name of vessel)
charges to .....
(Name of port of trans-shipment to
..... as per tariffs lawfully on file with
vessel)
the Interstate Commerce Commission have been paid to ..... as per
(Name of Railroad)

commodities between various points—Continued

From	To	Commodity or class	Local	Proportional	Tariff authority	Tariff reference
						dumping sheet of cargo No. ..... of ....., and that the coal or coal (Date) Briquettes were moved from ..... (Name of lake port) ..... by rail to interior destinations either as coal or coal briquettes as per bill of lading, shipping order or shipping instructions hereto attached. By ..... (Shipper)
Conneaut, Ohio	Bessemer, Pa	Iron Ore	360 gr. ton	121 gr. ton	Jones ICC 2453, B &LE ICC 1076.	This is called a "Direct Ore" rate. Note 1 reads, "The term 'Direct ore' represents Iron Ore handled from the rail of the vessel and loaded direct into the railroad car for forwarding to destination." "Dock Ore" and "Dock Ore, Intermediate Storage" rates are also provided but are the same as the "Direct Ore" rates plus dock or storage charges.
406 Buffalo, N. Y	Baltimore, Md	Wheat	17	10.33	LV ICC C-8740, Curlett, ICC A-479.	This is a Class rate. There is no commodity rate for local application from Conneaut. Title page of tariff reads "Local and Joint proportional Freight Tariff on Ex-Lake Grain—for export—." Item 1. "Application of Rates. The At-and-east of Buffalo, N. Y., Erie, Pa., or Oswego, N. Y. rates on ex-lake Grain—will be those in force on the date Grain—is contracted for immediate shipment from Buffalo, N. Y., except that if Grain—has not arrived at Buffalo, N. Y., on date of contract the rate in effect on date of arrival of vessel in Buffalo, N. Y., harbor, will apply. These rates will apply only when previous arrangements are made with the carriers named as initial lines in this tariff in order to provide for the elevation, storage, insurance, and necessary equipment.

Buffalo, N. Y.	Philadelphia, Pa	Wheat	17	10.33	LV ICC C-8740, Curlett, ICC A-479.	Title page of tariff reads "Local and Joint proportional Freight Tariff on Ex-Lake Grain—for export—." Item 1. "Application of Rates. The At-and-east of Buffalo, N. Y., Erie, Pa., or Oswego, N. Y., rates on ex-lake Grain—will be those in force on the date Grain—is contracted for immediate shipment from Buffalo, N. Y., except that if Grain—has not arrived at Buffalo, N. Y., on date of contract the rate in effect on date of arrival of vessel in Buffalo, N. Y., harbor, will apply. These rates will apply only when previous arrangements are made with the carriers named as initial lines in this tariff in order to provide for the elevation, storage, and insurance and necessary equipment.
Buffalo, N. Y.	New York, N. Y.	Wheat	17½	10.83	LV ICC C-8740, Curlett, ICC A-479.	Title page of tariff reads "Local and Joint proportional Freight Tariff on Ex-Lake Grain—for export—." Item 1. "Application of Rates. The At-and-east of Buffalo, N. Y., Erie, Pa., or Oswego, N. Y. rates on ex-lake Grain—will be those in force on the date Grain—is contracted for immediate shipment from Buffalo, N. Y., except that if Grain—has not arrived at Buffalo, N. Y., on date of contract the rate in effect on date of arrival of vessel in Buffalo, N. Y., harbor, will apply. These rates will apply only when previous arrangements are made with the carriers named as initial lines in this tariff in order to provide for the elevation, storage, insurance and necessary equipment.
Buffalo, N. Y.	Boston, Mass.	Wheat	19½	10.83	LV ICC C-8740, Curlett, ICC A-479.	Title page of tariff reads "Local and Joint proportional Freight Tariff on Ex-Lake Grain—for export—." Item 1. "Application of Rates. The At-and-east of Buffalo, N. Y., Erie, Pa. of Oswego, N. Y., rates on ex-lake Grain—will be those in force on the date Grain—is contracted for immediate shipment from Buffalo, N. Y., except that if Grain—has not arrived at Buffalo, N. Y., on date of contract the rate in effect on date of arrival of vessel in Buffalo, N. Y., harbor, will apply. These rates will apply only when previous arrangements are made with the carriers named as initial lines in this tariff in order to provide for the elevation, storage, insurance, and necessary equipment.

Statement of proportional and local rates (in cents per 100 pounds except as shown) maintained by railroads on various commodities between various points—Continued

From	To	Commodity or class	Local	Proportional	Tariff authority	Tariff reference
407 New York, N. Y.	Chicago, Ill.	1st Class	152	148	Curlett ICC A-330, and ICC A-539.	Item No. 205. "Rates named herein apply on Intercoastal Traffic originating at points on the Pacific Coast of the United States, Alaska and British Columbia, also on traffic originating at interior Pacific Coast points moving via Pacific Coast, Ports, and moving via the Panama Canal, when arriving at origin stations named on pages 7 and 8 of tariff, via vessel and delivered to the rail carrier direct from shipside or dock of vessel bringing such property to origin stations named on pages 7 and 8 of tariff, provided same has not been transhipped at any other United States port." Item No. 210. "Rates named herein apply on coastwise traffic originating at South Atlantic and Gulf Ports south of Albemarle Sound, and on traffic originating at interior points moving via said ports, when arriving" (thence same as item 205, above.)
New Orleans, La.	Chicago, Ill.	1st Class	215	142	Sperry ICC 343, Pope ICC 128.	Item 115. Application of Rates Named Herein. The rates named herein apply on traffic originating at points on the Pacific Coast of United States and British Columbia and moving via the Panama Canal—.
Jacksonville, Fla.	Chicago, Ill.	1st Class	239	142	Sperry ICC 343, Pope ICC 128.	Item 115. Application of Rates Named Herein. The rates named herein apply on traffic originating at points on the Pacific Coast of United States and British Columbia and moving via the Panama Canal—.
Dallas, Tex.	Abilene, Tex.	Dry Goods N. O. S. Commodities generally.	112	76	Peel ICC 2881, Dodge ICC 361.	Item 2280-L, supplement 134. "(A) Subject to the provisions of notes B and C, column 70, rates shown in item 2010, determined as provided in Note A, will apply as proportional rates on interstate shipments of less than carload freight, all kinds (except as shown in note B), rated third class or higher in current Western (Consolidated) Classification between points on lines shown in paragraph (c) below."

Kansas City, Mo	Chicago, Ill	Wheat	23½	15	Kipp ICC A-2743	See Page 7.
Omaha, Neb	Chicago, Ill	Wheat	23½	15	Kipp ICC A-2743	See Page 7.
Minneapolis, Minn.	Chicago, Ill	Wheat	22	12	Kipp ICC A-2743	See Page 7.
408 Louisville, Ky	Memphis, Tenn	Merchandise, Consolidated, Rated 3rd Class or Higher, in mixed carload or mixed with articles subject to ratings lower than 3rd Class.		45	Miss. Valley Barge Line Tariff 3-F, ICC 37.	This rate applies only on shipments originating east of the Illinois-Indiana State line and moving into Louisville, Ky. by rail carrier. The tariff does not state whether the movement into Louisville, Ky., shall be in Less Carload or Carload, but in view of the term, Consolidated, it would appear that Less Carload inbound shipments were in contemplation.
Points in New England and Trunk Line Territory.	Texas and other Southwestern States.	Consolidation of Less Carload Shipment of Merchandise.			Atlantic Seaboard Freight, Bureau Tariff No. 37.	Items 1545 to 1570, inclusive, permit the Consolidation of Less Carload shipment at Port and reshipment therefrom in Carloads at the regular Carload Rate from such reforwarding point. Item 1570 is quoted below: CONSOLIDATION OF SHIPMENT AT DOCKS OF GULF STEAMSHIP LINES. Upon instructions from shipper or consignee to Consolidate and forward in Carloads, two or more shipments which aggregate a Carload or more consigned to one consignee at one destination, will be assembled at the piers of the Gulf Steamship Lines at North Atlantic Ports or Texas Gulf Ports, and the Carload rate will be applied from the Gulf Steamship Line Piers at the North Atlantic Ports or Texas Gulf Ports to destination.

"(B) The rates published in this item apply only on interstate traffic received in carloads (see exceptions) at points from which rates are published in this item and reshipped from such points in less-than-carload lots within forty-eight (48) hours after the expiration of free time allowed on the inbound movement and outbound billing must show reference to the railroad car by initial and number where inbound movement was by railroad car and reference to vessel by name where inbound movement was by water carriers."

"Exception.—At Texas Gulf Ports (shown in paragraph 3 of item 300) the rates provided in this item will also apply on import and Coastwise traffic which arrived at said ports in less-than-carload lots."

Statement of proportional and local rates (in cents per 100 pounds except as shown) maintained by railroads on various commodities between variuos points—Continued

From	To	Commodity or class	Local	Proportional	Taiff authority	Tariff reference
						CONSOLIDATION OF SHIPMENT AT DOCKS OF GULF STEAMSHIP LINES "There shall not be included in any Carload any shipment not delivered to the Piers of Gulf Steamship Lines at North Atlantic Ports or Texas Gulf Ports within seven (7) days from date of delivery of the first lot included in Carload."
Indianapolis, Ind	Memphis, Tenn	Mixed Carload Shipments of Merchandise originating at points in Central Freight Association, New England and Trunk Line Territories.			CFA Tariff No. 522-A, B. T. Jones, ICC 2893.	This tariff publishes proportional rates but does not state whether or not the inbound movement shall be less Carload or Carloads.

Application of rates.—Item 25-C Cancels 25-B. Subject, Application of proportional rates, reissue; effective October 1, 1937, in supplement No. 19 (except as noted). Application.—The proportional rates provided for in tariff, as amended, will apply only on commodities listed or referred to in Section No. 5 of this item and only in accordance with the provisions of Sections 1 to 5, inclusive, of this item, as follows:

Section No. 1, through shipments.—(a) On through shipments (continuous, reconsigned or reshipped in original car without unloading) originating beyond points from which proportional rates are published.

When grain is sold on track and rebilled without surrender of duplicate inbound freight bill, for the reason that it is not available until cars have been unloaded at final destination and weights determined, a duplicate disposition order properly endorsed, will be accepted in lieu thereof, and it must show all inbound references, viz: inbound carrier, point of origin, original date of shipment and rate paid to proportional rate point. In such instances no endorsement will be required on duplicate freight bills, which will be secured by carrier's agent direct from the inbound carrier and applied against inbound billing. No substitution of tonnage will be allowed.

Transit shipments.—(b) On shipments originating beyond points from which proportional rates are published and reaching such points by rail, accorded transit privilege at such points as authorized in W. T. L. Tariff No 331-C, Agent L. E. Kipp's I. C. C. No. A-2819, Ill. C. C. No. 264, P. S. C. Mo. No. 601, or at other points authorized in transit tariffs.

Ex Lake Shipments from △Chicago, Ill., Duluth, Minn., △Green Bay, Wis., Itasca, Wis., △Manitowoc, Wis., △Milwaukee, Wis. or Superior, Wis., to destination territory described in Items 30 and 35.

(c) On shipments of Ex-lake whole grain, flaxseed and/or screenings which arrive at △Chicago, Ill., Duluth, Minn., △Green Bay, Wis., Itasca, Wis., △Manitowoc, Wis., △Milwaukee, Wis., or Superior, Wis., by boat, shippers must certify that shipments were received by boat, and surrender of inbound freight bills will not be required.

The rates on ex-lake whole grain, flaxseed and/or screenings to destination territory described in Items 30 and 35 will be those in effect on the date shipment is tendered the rail carriers for shipment from △Chicago, Ill., Duluth, Minn., △Green Bay, Wis., Itasca, Wis., △Manitowoc, Wis., △Milwaukee, Wis., or Superior, Wis.

(d) Will also apply on Grain Products taking grain rates as per Item 10 when such products are milled or manufactured from grain arriving at points shown in paragraph (c) of this Section.

(e) The provisions of sub-paragraph 1, 2, and 3 of paragraph (a) of Item 75 of W. T. L. Tariff No. 331-C, Agent L. E. Kipp's I. C. C. No. A-2819, Ill. C. C. No. 264, P. S. C. Mo. No. 601, will not apply in connection with application of rates authorized in paragraphs (c) and (d) of this Section.

Section No. 2 (see exception), minimum through rate to be applied.—(a) The proportional rates published in this tariff are subject to minimum through rate from point of origin to proportional rate destination as follows:

Single factor flat rate from origin point to proportional rate destination via the route of shipment or any other route, but via the same carrier handling shipment from point of origin, or single factor flat rate from proportional rate point to proportional rate destination, whichever is higher, in effect on date of shipment from point of origin.

(b) If the flat rate to a proportional rate point from which a proportional rate is published, plus the proportional rate beyond, makes less than the minimum through rate authorized herein, add to the proportional rate named in tariff an amount sufficient to equal the minimum through rate required by Paragraph (a).

(c) Where proportional rate applies to a proportional rate point, the actual point of origin and not the point from which the proportional rate applies shall be used in determining the minimum through rate from point of origin to proportional rate destination.

Exception. The provisions of this section will not apply in connection with application of rates authorized in paragraphs (c) and (d) of Section 1 of this item.

Section No. 3. Policing rules to govern or privilege hereunder forfeited.—All shipments accorded transit service as per Section No. 1, and forwarded at the proportional rates named in this tariff, will be subject to the rules and conditions named in W. T. L. Tariff No. 331-C, Agent L. E. Kipp's I. C. C. No. A-2819, Ill. C. C. No. 264, P. S. C. Mo. No. 601.

Where compliance is not made by shipper and consignees with all applicable provisions of said tariff the local (flat not proportional) rate in effect on the date of the outbound shipment will apply.

Section No. 4—Part 1. Applicable on interstate traffic.—Except as provided in Section No. 1 paragraph (c) and Section 4, Part 2 the rates named herein are applicable only on interstate traffic and only when an inbound freight bill has been surrendered covering shipment on which an interstate rate lawfully on file with the Interstate Commerce Commission has been paid from point of origin.

Section No. 4—Part 2. Applicable on intrastate traffic.—The rates named herein are also applicable on intrastate traffic as provided in Item 70 but only when inbound freight bill has been surrendered covering shipment on which a rate lawfully on file with the State Commissioners has been paid from point of origin.

Section No. 5. List of commodities upon which rates apply.—For lists of commodities on which this tariff applies and the rate basis thereon, see W. T. L. Tariff No. 330-C, Agent L. E. Kipp's I. C. C. No. A-2814, Ill. C. C. No. 262, P. S. C. Mo. No. 598.

△Reference mark "①" and explanation thereof eliminated. Reissue. Effective September 30, 1937, in Supplement No. 20.

410 EXHIBIT G

C. & N. W. I. C. C. 10585

This tariff provides concentration and transit privileges on Butter, Eggs, Frozen Cream, Poultry, and Rabbits.

"The term 'concentration' as used in this tariff means the shipment in less than carloads of commodities named in this tariff to concentrating points for purposes specified in this item and reshipment from the concentrating point in carloads."

A—Butter, for Reworking, Grading, Mixing, Repacking, Storing, and/or Processing.

B—Eggs, for drying, Desiccating, Canning, Freezing, etc.

C———

D———

E—Poultry, Live or Dressed, for Dressing, Packing, Grading, Mixing, Freezing.

"Rate into the transit station—will be readjusted—to the difference between the carload rate on the commodity forwarded from the transit station (applying from the transit station) to final destination, and the carload rate from point origin to final destination, based on rates in effect on date of shipment from point of origin, plus transit charge as provided in the various items."

Transit charge is 3¢ per cwt.

411 EXHIBIT F

Statement of various proportional rate applications from tariffs of motor carriers now on file with the Commission and in effect.

Southern Motor Carriers Rate Conference Motor Freight Tariff No. 29–A (Gulf Points Tariff) MF–I. C. C. No. 91, W. M. Miller, Agent. Issued June 11th, 1937—Effective July 15th, 1937.

Taken from Item 200, page 7

Merchandise, viz: All merchandise rated first class or lower received from or delivered to steamships, barge lines, carloading, and forwarding companies, AQ (Application only between Mobile, Ala., and New Orleans, La., and intermediate points as provided in Item 120).

The Cleveland, Columbus and Cincinnati Highway, Inc., Motor Freight Tariff No. 53, MF–I. C. C. No. B–122, W. L. Meyers, Agent, Central Motor Freight Bureau, Inc. Issued July 20th, 1937—Effective August 30th, 1937.

Taken from Rule 40, page 5

(c) Less than truckload proportional rates named in this Tariff (see Table of Proportional Rates, Section 12) will apply from points of interchange named in Note 1 below to points named in this Tariff on traffic originating beyond shipped via rail carriers in carload lots for continuous transportation of the entire contents of the car via the Cleveland, Columbus and Cincinnati Highway, Inc.

Supplement No. 29 to Southwestern Motor Freight Lines' Tariff No. 1, MF–I. C. C. No. 1, J. D. Hughett, Agent.
Issued October 22, 1937—Effective November 30, 1937.

Taken from Item 1112–J, section 2, pages 19–20, Sup. 29

Freight, All Kinds (see Exception A), in less than truckload lots, transported by lines parties to this Tariff. (See Exceptions B & C).

Rates provided herein apply only as proportional rates on through interstate movements, from original points of origin shown on inbound billing to destinations on lines of parties to this Tariff. (See Exceptions B & C).

Rates apply locally and/or jointly only on interstate traffic as follows: (See Notes 1 and 2)

(a). On shipments arriving at any point in Texas in carloads, by railroad, and reforwarded in L. T. L. quantities to destinations in Texas or to Shreveport, La., and/or Texarkana, Ark.

NOTE 1.—A period of not more than forty-eight (48) hours following the expiration of free time (i. e., the time following arrival of shipment within which rail or water carriers make no charge for demurrage or storage on freight remaining in their possession) on in-bound movement, will be allowed at any reforwarding point named in this item within which time limit shipments to be reforwarded under the provisions of this item must be tendered to the line performing the outbound movement from reforwarding point.

412 NOTE 2.—The outbound billing from any reforwarding point named in this Item must show reference to the railroad car by initial and number in which any shipment reached such reforwarding point, if by railroad, and reference to the coastwise vessel by name, in which any shipment reached such reforwarding point if by coastwise vessel.

413 Before the Interstate Commerce Commission

I. & S. Docket M-247

PROPORTIONAL CONCENTRATION AND DISTRIBUTION RATES

Southwestern Cotton Concentration Rate Adjustment

S. W. L. Tariff 237-A, J. R. Peel's I. C. C. No. 2978 Items 350 Sec. (a), 360 and 390

St. L. S. W. Ry. Tariff 8859-F, I. C. C. No. 4991 Supplement No. 6; Items 15-B, 20-B

Applicable on concentration of cotton and cotton linters at Missouri, Arkansas and Louisiana compression points.

PROVISIONS OF TARIFFS

On cotton or cotton linters which have been concentrated and/or compressed and are subsequently reshipped via the St. Louis Southwestern Railway freight charges will be readjusted to the basis of protecting for the transportation of the through rate hereinafter authorized.

The through rate to be applied under these rules is the through rate from original point or points of origin as represented by the inbound freight bill or bills surrendered to final destination applicable from such origin or origins to and via the concentration or transit point, in effect on date of shipment from initial point or points of origin on the weight of the cotton reshipped plus charges as provided in paragraphs (a), (b), (c), (d) and (e), of item 20-A, and item 23.

In the event of different through rates from origin points the through carload rate from each point will be protected on basis of the outbound weight of the cotton originating at each such origin subject to the addition of accessorial charges, if any.

On shipments of cotton or cotton linters moving at less-than-carload or any quantity rates from concentration points, concentration and/or compression will be accorded once at concentration points on less-than-carload shipments from origin points provided with inbound rates in Column "A" on pages 9 thru 15, of tariff.

On shipments of cotton or cotton linters moving at carload rates from concentration points, concentration and/or compression will be accorded at the concentration points on less-than-carload shipments from origin points provided with inbound rates in Column "A" on pages 9 thru 15, of tariff. Charges in addition to the through rates will be assessed as follows:

Witness: Gerard.

Exhibit No. 6

Before the Interstate Commerce Commission
I. & S. Docket M-247

Proportional Concentration and Distribution Rates

Comparison of proposed rates and through forwarder rates with rail carrier comparable through rates and divisions

[All rates in cents per 100 pounds]

From	To—	Appleton, Wis.					Fond du Lac, Wis.					Kenosha, Wis.				
		1	2	3	R26	4	1	2	3	R26	4	1	2	3	R26	4
Buffalo, N. Y.	Rail through rate	122	104	85	67	61	122	104	85	67	61	110	94	77	61	55
	Forwarder through rate	122	104	85	—	—	122	104	85	—	—	110	94	—	—	—
	Rail division beyond Chicago	*50	43	35	27	25	*50	43	35	27	25	*32	27	22	18	16
	Mtr. carrier rate (suspended)		40 min. 40					40 min. 40					25 min. 30			
Boston, Mass.	Rail through rate	167	142	117	92	84	167	142	117	92	84	154	131	108	85	77
	Forwarder through rate	167	140	116	—	—	167	142	117	—	—	154	131	108	—	—
	Rail division beyond Chicago	*55	47	39	31	28	*52	44	36	29	26	14	12	10	08	07
	Mtr. carrier rate (suspended)		40 min. 40					40 min. 40					25 min. 30			
New York, N. Y.	Rail through rate	163	139	114	90	82	163	139	114	90	82	152	129	106	84	76
	Forwarder through rate	163	139	114	—	—	163	139	—	—	—	152	129	106	—	—
	Rail division beyond Chicago	*55	47	39	31	—	*52	44	36	29	26	15	13	11	08	08
	Mtr. carrier rate (suspended)		40 min. 40					40 min. 40					25 min. 30			
Kansas City, Mo.	Rail through rate	150	128	105	—	83	144	122	101	—	79	133	113	93	—	73
	Forwarder through rate	150	128	—	—	—	139	119	—	—	—	133	113	—	—	—
	Rail division beyond Chicago	*56	48	39	—	31	*57	48	40	—	31	47	40	33	—	26
	Mtr. carrier rate (suspended)		40 min. 40					40 min. 40					25 min. 30			
Philadelphia, Pa.	Rail through rate	163	139	114	90	82	163	139	114	90	82	151	128	105	83	76
	Forwarder through rate	163	139	114	—	—	163	139	—	—	—	151	128	106	—	—
	Rail division beyond Chicago	*57	48	40	31	29	*52	44	36	29	26	17	14	12	09	08
	Mtr. carrier rate (suspended)		40 min. 40					40 min. 40					25 min. 30			
St. Louis, Mo.	Rail through rate	109	93	76	60	55	103	88	72	57	52	92	78	64	51	46
	Forwarder through rate	109	—	—	—	—	103	—	—	—	—	92	—	—	—	—
	Rail division beyond Chicago	*52	44	36	29	26	*46	39	32	31	23	*32	27	22	18	16
	Mtr. carrier rate (suspended)		40 min. 40					40 min. 40					25 min. 30			

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Proportional Concentration and Distribution Rates—Continued

From		Appleton, Wis,					Fond du Lac, Wis.					Kenosha, Wis.				
To—		1	2	3	R26	4	1	2	3	R26	4	1	2	3	R26	4
Denver, Colo	Rail through rate	263	224	184	—	145	258	219	181	—	142	254	216	178	—	142
	Forwarder through rate	260	222	183	—	—	255	217	180	—	—	251	214	177	—	—
	Rail division beyond Chicago	*61	52	42	—	34	*57	48	40	—	29	*38	32	27	—	21
	Mtr. carrier rate (suspended)			40 min. 40					40 min. 40					25 min. 30		
415 Dallas, Tex	Rail through rate	255	217	179	—	140	250	213	175	—	138	244	207	171	—	134
	Forwarder through rate	252	215	178	—	—	247	211	174	—	—	244	205	170	—	—
	Rail division beyond Chicago	41	36	31	—	24	48	36	30	—	23	22	19	17	—	12
	Mtr. carrier rate (suspended)			40 min. 40					40 min. 40					25 min. 30		
Oklahoma City, Okla	Rail through rate	231	196	162	—	127	225	191	158	—	117	217	184	152	—	113
	Forwarder through rate	231	196	162	—	—	225	191	158	—	—	217	184	152	—	—
	Rail division beyond Chicago	45	38	31	—	24	42	36	30	—	22	20	17	14	—	10
	Mtr. carrier rate (suspended)	116	40 min. 40						40 min. 40					25 min. 30		
Cleveland, Ohio	Rail through rate	116	99	81	64	58	111	94	78	61	56	99	84	69	54	50
	Forwarder through rate	116	99	—	—	—	111	—	—	—	—	99	—	—	—	—
	Rail division beyond Chicago	*53	45	37	29	27	*48	41	29	26	24	*33	28	23	18	17
	Mtr. carrier rate (suspended)		04 min. 40						40 min. 40					25 min. 30		

416 From TO—		Racine, Wis.					Sheboygan, Wis.				
		1	2	3	R26	4	1	2	3	R26	4
Buffalo, N. Y.	Rail through rate	110	94	77	61	55	110	94	77	61	55
	Forwarder through rate	110	94	—	—	—	110	94	—	—	—
	Rail division beyond Chicago	*33	28	23	18	17	*42	36	29	23	21
	Mtr. carrier rate (suspended)			30 min. 30					35 min. 40		
Boston, Mass.	Rail through rate	154	131	108	85	77	154	131	108	85	77
	Forwarder through rate	154	131	108	—	—	154	131	108	—	—
	Rail division beyond Chicago	14	12	10	08	07	*46	39	32	25	23
	Mtr. carrier rate (suspended)			30 min. 30					35 min. 40		
New York, N. Y.	Rail through rate	152	129	106	84	76	152	129	106	84	76
	Forwarder through rate	152	129	106	—	—	152	129	106	—	—
	Rail division beyond Chicago	16	13	11	08	08	*47	40	33	26	24
	Mtr. carrier rate (suspended)			30 min. 30					35 min. 40		
Kansas City, Mo.	Rail through rate	133	113	93	—	73	147	125	103	—	81
	Forwarder through rate	133	113	—	—	—	147	125	—	—	—
	Rail division beyond Chicago	47	40	33	—	26	*50	43	35	—	28
	Mtr. carrier rate (suspended)			30 min. 30					35 min. 40		
Philadelphia, Pa.	Rail through rate	151	128	106	83	76	151	128	106	83	76
	Forwarder through rate	151	128	106	—	—	151	128	—	—	—
	Rail division beyond Chicago	17	14	12	09	08	*50	43	35	28	25
	Mtr. carrier rate (suspended)			30 min. 30					35 min. 40		
St. Louis, Mo.	Rail through rate	92	78	64	51	46	105	89	74	58	53
	Forwarder through rate	92	—	—	—	—	105	—	—	—	—
	Rail division beyond Chicago	*34	29	24	19	17	*46	39	32	25	23
	Mtr. carrier rate (suspended)			30 min. 30					35 min. 40		
Denver, Colo.	Rail through rate	254	216	178	—	140	265	225	186	—	146
	Forwarder through rate	251	214	177	—	—	262	223	185	—	—
	Rail division beyond Chicago	*41	35	29	—	23	*56	48	39	—	31
	Mtr. carrier rate (suspended)			30 min. 30					35 min. 40		
Dallas, Tex.	Rail through rate	244	207	171	—	134	251	213	176	—	138
	Forwarder through rate	241	205	170	—	—	248	211	175	—	—
	Rail division beyond Chicago	21	17	14	—	11	44	36	31	—	24
	Mtr. carrier rate (suspended)			30 min. 30					35 min. 40		
417 Oklahoma City, Okla.	Rail through rate	217	184	152	—	113	225	191	158	—	11
	Forwarder through rate	217	184	152	—	—	225	191	158	—	—
	Rail division beyond Chicago	20	17	14	—	10	42	36	30	—	22
	Mtr. carrier rate (suspended)			30 min. 30					35 min. 40		

*1st Class pro-rate used as basis for dividing through rate.

PROPORTIONAL CONCENTRATION AND DISTRIBUTION RATES—Continued

From / TO—		Racine, Wis.					Sheboygan, Wis.				
		1	2	3	R26	4	1	2	3	R26	4
Cleveland, Ohio	Rail through rate	99	84	69	54	50	108	92	76	59	54
	Forwarder through rate	99	—	—	—	—	108	92	—	—	—
	Rail division beyond Chicago	*34	29	24	19	17	*45	38	32	25	23
	Mtr. carrier rate (suspended)	30 min. 30					35 min. 40				

TARIFF AUTHORITY

To	Forwarder	Rail		Truck
Buffalo, N. Y	Acme MF.-I. C. C. No. 523	Central Frt. Assoc	I. C. C. No. 2462	All Rates.
Boston, Mass	Acme MF.-I. C. C. No. 41	Central Frt. Assoc	I. C. C. No. 2767	
New York, N. Y	Acme MF.-I. C. C. No. 45	Central Frt. Assoc	I. C. C. No. 2767	Central States Motor Frt. Bureau MF.-I. C. C. No. B-138 (suspended.)
Kans. City, Mo	Acem MF.-I. C. C. No. 82	Western Trunk Line	I. C. C. No. A-2592	
Phila., Pa	Acme MF.-I. C. C. No. 42	Central Frt. Assoc	I. C. C. No. 2767	
St. Louis, Mo	Acme MF.-I. C. C. No. 95	Ill. Frt. Assoc	I. C. C. No. 201	
Denver, Colo	Acme MF.-I. C. C. No. 497	Western Trunk Line	I. C. C. No. A-2594	
Dallas, Tex	Brady's MF.-I. C. C. No. 1	So. Western Lines	I. C. C. No. 2881	
Oklahoma City, Okla	Brady's MF.-I. C. C. No. 2	So. Western Lines	I. C. C. No. 2881	
Cleveland, O.	Acme MF.-I. C. C. No. 30	Central Frt. Assoc	I. C. C. No. 2452	

From—	To—	Aurora, Ill.					Batavia, Ill.					Gary, Ind.				
		1	2	3	R26	4	1	2	3	R26	4	1	2	3	R26	4
Boston, Mass.	Rail through rate	157	133	110	86	79	157	133	110	86	79	154	131	108	85	77
	Forwarder through rate	157	133	110			157	133	110			154	131	108		
	Rail division beyond Chicago	20	17	14	11	10	20	17	14	11	10	*29	25	20	16	15
	Motor carrier rate (suspended)			20 Min. 35					20 Min. 35					20 Min. 35		
Buffalo, N. Y.	Rail through rate	113	96	79	62	57	113	96	79	62	57	110	94	77	61	55
	Forwarder through rate	113/	96				113	96				110	94	77		
	Rail division beyond Chicago	*31	26	22	17	16	28	24	20	15	14	*28	24	20	15	14
	Motor carrier rate (suspended)			20 Min. 35					20 Min. 35					20 Min. 35		
Kansas City, Mo.	Rail through rate	120	102	84		66	120	102	84		66	130	111	91		72
	Forwarder through rate	120					120	102				130	111			
	Rail division beyond Chicago	*28	24	20		15	*28	24	20		15	*29	25	20		16
	Motor carrier rate (suspended)			20 Min. 35					20 Min. 35					20 Min. 35		
New York, N. Y.	Rail through rate	155	132	109	85	78	155	132	109	85	78	152	129	106	84	76
	Forwarder through rate	155	132	109			155	132	109			152	129	106		
	Rail division beyond Chicago	19	16	14	11	10	19	16	14	11	10	*30	26	21	17	15
	Motor carrier rate (suspended)			20 Min. 35					20 Min. 35					20 Min. 35		
Philadelphia, Pa.	Rail through rate	149	127	104	82	75	149	127	104	82	75	145	123	102	80	73
	Forwarder through rate	149	127	104			149	127	104			145	123	102		
	Rail division beyond Chicago	19	16	13	10	09	19	16	13	10	09	*29	25	20	16	15
	Motor carrier rate (suspended)			20 Min. 35					20 Min. 35			20		Min. 35		
St. Louis, Mo.	Rail through rate	82	70	57	45	41	84	71	59	46	42	84	71	59	46	42
	Forwarder through rate	82	70				84					84	71			
	Rail division beyond Chicago	*26	22	18	14	13	*27	23	19	15	14	*25	21	18	14	13
	Motor carrier rate (suspended)			20 Min. 35					20 Min. 35					20 Min. 35		
419 Denver, Colo.	Rail through rate	248	211	174		136	248	211	174		136	254	216	178		140
	Forwarder through rate	245	209	173			245	209	173			251	214	177		
	Rail division beyond Chicago	*35	30	25		19	*35	30	25		19	*33	28	23		18
	Motor carrier rate (suspended)			20 Min. 35					20 Min. 35					20 Min. 35		
Dallas, Texas	Rail through rate	237	201	166		130	237	201	166		130	237	201	160		130
	Forwarder through rate	234	199	165			234	199	165			234	199	165		
	Rail division beyond Chicago	18	15	12		10	18	15	12		10	*33	28	23		18
	Motor carrier rate (suspended)			20 Min. 35					20 Min. 35					20 Min. 35		
Oklahoma City, Okla.	Rail through rate	209	178	146		115	209	178	146		115	209	178	146		115
	Forwarder through rate	209	178	146			209	178	146			209	178	146		
	Rail division beyond Chicago	18	15	12		10	18	15	12		10	*31	26	22		17
	Motor carrier rate (suspended)			20 Min. 35					20 Min. 35					20 Min. 35		
Cleveland, Ohio	Rail through rate	96	82	67	53	48	96	82	67	53	48	92	78	64	51	46
	Forwarder through rate	96	82				96	82				92	78			
	Rail division beyond Chicago	*29	25	20	16	15	*29	25	20	16	15	*27	23	19	15	14
	Motor carrier rate (suspended)			20 Min. 35					20 Min. 35					20 Min. 35		

*First class pro-rate used as basis for dividing through rate.

Proportional Concentration and Distribution Rates—Continued

420 From / To—		Elgin, Ill.					Evanston, Ill.				
		1	2	3	R26	4	1	2	3	W26	4
Buffalo, N. Y.	Rail through rate	113	96	79	62	57	110	94	77	61	55
	Forwarder through rate	113	96				110	94	77		
	Rail division beyond Chicago	*31	26	22	[illegible]	16	*26	22	18	14	13
	Motor carrier rate (suspended)	25		Min. 35			15		Min. 35		
Boston, Mass	Rail through rate	157	133	110	86	79	154	131	108	85	77
	Forwarder through rate	157	133				154	131	108		
	Rail division beyond Chicago	31	27	22	17	16	14	12	10	8	7
	Motor carrier rate (suspended)	25		Min. 35			15		Min. 35		
New York, N. Y.	Rail through rate	155	132	109	85	78	152	129	106	84	76
	Forwarder through rate	155	132	109			152	129	106	84	
	Rail division beyond Chicago	31	26	22	17	16	15	13	11	8	8
	Motor carrier rate (suspended)	25		Min. 35			15		Min. 35		
Kansas City, Mo.	Rail through rate	124	105	87		68	130	111	91		72
	Forwarder through rate	124	105				130	111			
	Rail Division beyond Chicago	*29	25	20		16	*27	23	19		15
	Motor carrier rate (suspended)	25		Min. 35			15		Min. 35		
Philadelphia, Pa.	Rail through rate	149	127	104	82	75	151	128	106	83	76
	Forwarder through rate	149	127	104			151	128	106		
	Rail division beyond Chicago	30	25	21	16	15	17	14	12	09	08
	Motor carrier rate (suspended)	25		Min. 35			15		Min. 35		
St. Louis, Mo.	Rail through rate	84	71	59	46	42	87	74	61	48	44
	Forwarder through rate	84					87	74			
	Rail division beyond Chicago	*27	23	19	15	14	*25	21	18	14	13
	Motor carrier rate (suspended)	25		Min. 35			15		Min. 35		
Denver, Colo.	Rail through rate	251	213	176		138	254	216	178		140
	Forwarder through rate	248	211	175			251	214	177		
	Rail division beyond Chicago	*35	30	25		19	*30	26	21		17
	Motor carrier rate (suspended)	25		Min. 35			15		Min. 35		
Dallas, Texas	Rail through rate	237	201	166		130	237	201	166		130
	Forwarder through rate	234	199	165			234	199	165		
	Rail division beyond Chicago	18	15	14		10	19	16	12		10
	Motor carrier rate (suspended)	25		Min. 35			15		Min. 35		

From		Elgin, Ill.					Evanston, Ill.				
To—		1	2	3	R26	4	1	2	3	R26	4
421 Oklahoma City, Okla	Rail through rate	209	178	146		115	209	178	146		115
	Forwarder through rate	209	178	146			209	178	146		
	Rail division beyond Chicago	18	15	13		10	18	15	12		10
	Motor carrier rate (suspended)	25	Min. 35				15	Min. 35			
Cleveland, Ohio	Rail through rate	96	82	67	53	48	94	80	66	54	47
	Forwarder through rate	96	82				94	80			
	Rail division beyond Chicago	*29	25	20	16	15	*25	21	18	14	13
	Motor carrier rate (suspended)	2[illegible]	Min. 35				15	Min. 35			

*First class pro-rate used as basis for dividing through rate.

TARIFF AUTHORITY

To—	Forwarder		Rail		Motortruck
Buffalo, N. Y	Acme	MF-I. C. C. No. 523	Central Frt. Assoc	I. C. C. No. 2452	All rates.
Boston, Mass	Acme	MF-I. C. C. No. 41	Central Frt. Assoc	I. C. C. No. 2767	
New York, N. Y	Acme	MF-I. C. C. No. 45	Central Frt. Assoc	I. C. C. No. 2767	
Kansas City, Mo	Acme	MF-I. C. C. No. 82	Western Trunk Line	I. C. C. No. A-2592	Central States Motor Freight Bureau MF-I. C. C. No. B-142 (suspended).
Philadelphia, Pa	Acme	MF-I. C. C. No. 42	Central Frt. Assoc	I. C. C. No. 2767	
St. Louis, Mo	Acme	MF-I. C. C. No. 95	Ill. Frt. Assoc	I. C. C. No. 201	
Denver, Colo	Acme	MF-I. C. C. No. 497	Western Trunk Line	I. C. C. No. A-2594	
Dallas, Texas	Brady's	MF-I. C. C. No. 1	Southwestern Lines	I. C. C. No. 2881	
Oklahoma City, Okla	Brady's	MF-I. C. C. No. 2	Southwestern Lines	I. C. C. No. 2881	
Cleveland, Ohio	Acme	MF-I. C. C. No. 30	Central Frt. Assoc	I. C. C. No. 2452	

422
Gerard.

Exhibit No. 7

Before Interstate Commerce Commission I. & S. Docket M-247

PROPORTIONAL CONCENTRATION AND DISTRIBUTION RATES

Analysis of revenues and expenses of proposed service, Chicago metropolitan area—Summary

	Total carriers shown	Chicago Heights Trucking Co.	Elgin Storage & Transfer Co.
RECAPITULATION			
Direct expense	$298,320.62	$156,060.19	$142,260.43
Administrative expense	87,681.94	48,549.89	39,132.05
Total expense	$386,002.56	$204,610.08	$181,392.48
Total hundredweight	2,591,918	1,434,941	1,156,987
Exp. per hundredweight	14.89¢	14.26¢	15.68¢
Total truck miles	1,689,358	959,550	719,808
Expense per truck mile	22.85¢	21.32¢	25.20¢
COMPARISON OF RATE AND UNIT COSTS			
Proposed rate	24.70¢	24.70¢	24.70¢
Average expense	14.89¢	14.26¢	15.68¢
Carriers profit	9.81¢	10.44¢	9.02¢

423 CHICAGO HEIGHTS TRUCKING CO., CHICAGO HEIGHTS, ILLINOIS

Statement

This exhibit shows the following information on pages 2 to 10, inclusive, herein with respect to the cost of operation of this company for 1937:

Page 2: Recapitulation of all operating expenses.

Pages 3 and 4: The operations of this carrier are confined to pick-up and delivery service by highway trucks only within the metropolitan area of Chicago. Accordingly, all operating expenses, as detailed herein on page 3, including administrative costs as detailed, on page 4, are assignable to cost of pick-up and delivery service by highway units.

Page 5: Break-downs of the costs referred to herein are shown in detail on this sheet. It will be observed that these break-downs show cost per hundred pound, cost per truck mile, etc.

Page 6: This page indicates the proportion of taxes, insurance, wages, and salaries to the total operating costs of this carrier for the three items designated.

Page 7: This page shows a comparison of tonnage for a five-day period in April 1937, broken down to show separations between volume handled from connecting lines, forwarders, and local.

Pages 8 and 9: These pages show the comparison of costs with the proposed rates between principal points served by the carrier. It will be observed that this statement shows that the proposed rate is in excess of the costs as reflected in this exhibit.

Page 10: This page shows a map, indicating the principal points served by this carrier.

424 Summary of Operating Expenses 1937

Recapitulation

Pick-up delivery service by highway trucks	$156,060.19
Administrative, general and overhead	48,549.89
Total operating expenses	204,610.08

425 Cost Analysis

Details of Costs of Pick-up and Delivery Service by Highway Trucks 1937

Direct costs chargeable to highway operations:		
Repairs to garage equipment	$248.15	
Repairs to garage building	477.89	
Heat and light	2,770.32	
Wages mechanics, etc	4,202.88	
Repairs & repair parts	6,990.99	
Tires and tubes	1,722.26	
Supt's salaries	5,532.72	
Supt's expenses	582.28	
Wages drivers and helpers	51,331.38	
Gasoline, less tax	13,499.03	
Oil and lubricants	1,261.44	
Contract haulers	12,209.14	
Other transportation expenses	252.80	
Wages, terminal employees	19,665.50	
Solicitor's expense	1,719.97	
Insurance:		
P. L. and P. D.	6,134.15	
Workmen's compensation	3,849.42	
cargo	992.97	
Cargo, L and D	1,564.32	
Fire and Theft	1,031.08	
Other insurance	1,047.06	
Depreciation of equipment, (trucks)	12,541.18	
Gasoline tax	4,032.13	
Social security taxes	2,401.13	
Carried forward	$156,060.19	$156,060.19
426 Brought forward		$156,060.19
Administrative general and other overheads:		
Solicitors salaries	$5,024.50	
Tariffs and schedules	1,403.80	
Advertising	274.28	
Salaries, general officers	7,400.00	
Expenses, general officers	1,719.97	
Salaries, office employees	14,064.97	
Law expenses	1,987.51	
Office supplies	3,304.93	
Communication service	5,465.48	
Other administration and general expenses	245.89	
Depreciation, office furniture and fixtures	278.43	
Licenses, revenue equipment	2,154.91	
Social security taxes	600.00	
Other taxes	1,108.57	
Rents	1,896.00	
Interest, long-term debt	1,629.65	48,549.89
Total costs		$204,610.08

427	(1) Total tonnage (In lbs.)	143,4[illegible]33	
	Average cost per 100#		$ .14259
	(2) Average number of miles per trip	86	
	Number of trips	10,925	
	Total mileage	959,550	
	Average cost per mile		.2132
	Average cost per trip		18.7286
	(3) Total truck hours	80,030	
	Average cost per truck hour		2.556
	(4) Total number of shipments	127,411	
	Average weight per shipment (lbs.)	1,126	
	Average cost per shipment		1.6059
	(5) Total number stops made	203,858	
	Average cost per stop		1.013

428 Cost Analysis

Statement Showing Ratios of all Taxes, Insurance, and Direct Labor Costs to Total Truck-Mile and Per 100# Tonnage 1937

Items of cost	Amount	Percent
Taxes		
Gasoline taxes	$4,032.13	
Licenses, revenue equipment	2,154.91	
Social security taxes	3,001.13	
Other taxes	1,108.57	
Total taxes	10,296.74	5.03
Insurance		
P. L. and P. D	6,134.15	
Workmens compensation	3,849.42	
Cargo	992.97	
Cargo L. & D	1,564.32	
Fire and theft	1,031.08	
Other insurance	1,047.06	
Total insurance	14,619.00	7.14
Wages and salaries		
Wages, mechanics etc	4,202.88	
Supt's. salaries	5,532.72	
Wages, drivers and helpers	51,331.38	
Terminal employees wages	19,665.50	
Solicitors salaries	5,024.50	
Salaries, general officers	7,400.00	
Total wages and salaries	93,156.98	45.52

429 Comparison of Tonnage for a 5-Day Period in April 1937, Showing (1) Number of Shipments Handled; (2) Total Weight; (3) Total Revenue; (4) Number of Stops Necessary to Pick-Up and Deliver These Shipments; (5) Average Revenue Per Stop; and (6) Average Rate Per 100# Broken Down in Local Connecting Line Trucks and Forwarder Tonnage, 1937, Between Points Served by This Carrier

	Number of shipments	Weight (lbs.)	Revenue	Average rate	Number of stops—pick-up	Number of stops delivery	Av. wt. per shpnt.	Av. revenue per stop
Connecting line trunks	771	531, 670	$558. 34	$0. 105	412	361	690	$0. 722
Forwarders	289	99, 938 (10.7%)	247. 17 (17.8%)	.247(?)	46-(p3)	89	346	1. 831
Local	344	310, 633	580. 12	. 186	271	289	903	1. 035
Totals	1, 404	932, 241	1, 385. 63	. 148	729	739	663	. 943

430 Comparison of Cost With Proposed Rate Between Principal Points Served by This Carrier

Towns	Proposed rate	Cost per 100#	Towns	Proposed rate	Cost per 100#
Aetna, Ind	19	$0. 14259	Gary, Ind	20	$0. 14259
Arlington Heights, Ill	18	. 14259	Glen Ellyn, Ill	18	. 14259
Argo, Ill	15	. 14259	Glenwood, Ill	15	. 14259
Armour, Ind	20	. 14259	Grasselli, Ind	15	. 14259
Bannockburn, Ill	18	. 14259	Griffith, Ind	19	. 14259
Bartlett, Ill	19	. 14259	Hammond, Ind	15	. 14259
Bellwood, Ill	15	. 14259	Harvey, Ill	15	. 14259
Belmont, Ill	18	. 14259	Hazel Crest, Ill	17	. 14259
Bensenville, Ill	17	. 14259	Hebron, Ind	23	. 14259
Berkeley, Ill	17	. 14259	Hessville, Ind	15	. 14259
Bloomingdale, Ill	18	. 14259	Highland, Ind	15	. 14259
Blue Island	15	. 14259	Highland Park, Ill	18	. 14259
Broadview, Ill	15	. 14259	Highwood, Ill	18	. 14259
Brookfield, Ill	15	. 14259	Hillside, Ill	17	. 14259
Buffington, Ind	20	. 14259	Hinsdale, Ill	18	. 14259
Burnham, Ill	15	. 14259	Hobart, Ind	20	. 14259
Burr Oak, Ill	17	. 14259	Hollywood, Ill	17	. 14259
Calumet City, Ill	15	. 14259	Homewood, Ill	17	. 14259
Chesterton, Ind	23	. 14259	Indiana Harbor, Ind	15	. 14259
Chicago Heights, Ill	15	. 14259	Itasca, Ill	18	. 14259
Clarendon Hills, Ill	17	. 14259	Ivanhoe, Ill	17	. 14259
Cloverdale, Ill	19	. 14259	Joliet, Ill	20	. 14259
Congress Park, Ill	15	. 14259	Justice Park, Ill	17	. 14259
Creston, Ind	23	. 14259	Kankakee, Ill	25	. 14259
Crete, Ill	15	. 14259	Kenilworth, Ill	17	. 14259
Crown Point, Ind	20	. 14259	LaGrange, Ill	15	. 14259
Deerfield, Ill	18	. 14259	LaPorte, Ind	30	. 14259
Des Plaines, Ill	15	. 14259	Lambert, Ill	19	. 14259
Dixmoor, Ill	17	. 14259	Lansing, Ill	19	. 14259
Dolton, Ill	17	. 14259	Lemont, Ill	18	. 14259
Downers Grove, Ill	15	. 14259	Lisle, Ill	18	. 14259
Dyer, Ind	15	. 14259	Lockport, Ill	20	. 14259
East Chicago, Ind	15	. 14259	Lombard, Ill	17	. 14259
East Gary, Ind	20	. 14259	Lottaville, Ind	20	. 14259
Elk Grove, Ill	18	. 14259	Lowell, Ind	23	. 14259
Elmhurst, Ill	15	. 14259	Lyons, Ill	17	. 14259
Elmwood Park, Ill	15	. 14259	Mannheim, Ill	17	. 14259
Evanston, Ill	15	. 14259	Matteson, Ill	17	. 14259
Fairview, Ill	17	. 14259	Maynard, Ind	15	. 14259
Floosmoor, Ill	18	. 14259	Maywood, Ill	15	. 14259
Forest Park, Ill	15	. 14259	431 McCook, Ill	15	. 14259
Franklin Park, Ill	15	. 14259	Melrose Pk., Ill	15	. 14259

Towns	Proposed rate	Cost per 100#	Towns	Proposed rate	Cost per 100#
Merrillville, Ind	20	$0.14259	Roselle, Ill	18	$0.14259
Michigan City, Ind	30	.14259	Romeo, Ill	17	.14259
Midlothian, Ill	17	.14259	Ross, Ind	20	.14259
Miller, Ind	20	.14259	Sag Bridge, Ill	19	.14259
Morton Grove, Ill	15	.14259	Schererville, Ind	20	.14259
Mt. Prospect, Ill	17	.14259	Schiller Park, Ill	17	.14259
Munster, Ind	15	.14259	South Hollan, Ill	17	.14259
Naperville, Ill	20	.14259	Spring Forest, Ill	17	.14259
New Chicago, Ind	20	.14259	Statesville, Ill	20	.14259
Niles, Ill	17	.14259	Steger, Ill	15	.14259
Niles Center, Ill	15	.14259	Summit, Ill	15	.14259
Northbrook, Ill	18	.14259	Techny, Ill	15	.14259
Oak Forest, Ill	17	.14259	Thornton, Ill	17	.14259
Oak Glen, Ill	19	.14259	Tinley Park, Ill	18	.14259
Oak Lawn, Ill	17	.14259	Tolleston, Ind	20	.14259
Oak Park, Ill	15	.14259	Valparaiso, Ind	25	.14259
Ontarioville, Ill	19	.14259	Villa Park, Ill	15	.14259
Orland Park, Ill	17	.14259	Westchester, Ill	17	.14259
Palatine, Ill	19	.14259	Western Springs	18	.14259
Palmer, Ind	20	.14259	Westmont, Ill	18	.14259
Palos Park, Ill	17	.14259	Westmore, Ill	17	.14259
Park Ridge, Ill	15	.14259	Westwood, Ill	17	.14259
Phoenix, Ill	17	.14259	Wheaton, Ill	18	.14259
Posen, Ill	17	.14259	Wheeler, Ind	21	.14259
Riverdale, Ill	15	.14259	Whiting, Ind	15	.14259
River Forest, Ill	17	.14259	Willow Springs, Ill	17	.14259
River Grove, Ill	17	.14259	Wilmette, Ill	15	.14259
Riverside, Ill	17	.14259	Winfield, Ill	20	.14259
Robertdale, Ind	15	.14259	Winetka, Ill	15	.14259
Roby, Ind	15	.14259	Worth, Ill	17	.14259

2 CHICAGO HEIGHTS TRUCKING COMPANY, CHICAGO HEIGHTS, ILL.



This map shows general territory served by this carrier.

433 ELGIN STORAGE AND TRANSFER CO., ELGIN, ILLINOIS

Statement

This exhibit, consisting of six pages shows the following data for the year 1937, or to the periods specifically named herein:

Page 2: This page shows the total operating expenses of this company for the year 1937. The entire expenses are directly chargeable to all services since carrier's operation pertains to picking up and delivering between various points in the so-called metropolitan area of Chicago, embracing that territory shown in the map as contained on page 7 herein, accordingly, there is no breakdown necessary between highway and terminal costs.

Page 3: This page shows the average cost per hundred pounds based upon the total tonnage handled at the total cost of the operation. This page also shows various other data, such as number of hours trucks were operated, the average hours required per trip, the total number of trips made during the year, the average mile per trip, the total number of stops made by vehicle in picking up and delivering shipments and the total truck miles traveled. This page also shows the average cost per hour of operating all vehicles, the average cost per trip, cost per truck mile, and the cost per stop.

Page 4: This page shows a distribution of the total taxes, insurance, and wages and salaries pro rated as to its relationship of the total cost of operation.

Page 5: This page shows the principal points served by this carrier together with the proposed rate and the total cost of operation per hundred pounds for handling such traffic.

Page 6: This page shows the result of an analysis made of all shipments transported by this carrier during the week of January 17, 1938, to or from Chicago, Illinois, and shows the total weight of the tonnage handled in connection with forwarders or carloaders, the total revenue received therefrom, the average rate per hundred pounds, total number of shipments, number of stops necessary to pick-up or deliver and the average revenue per stop. These same break-downs are shown for

434 tonnage identified as local tonnage which represents shipments originating and destined to points on this carrier's line. This page also shows this same information in connection with freight handled in connection with truck lines transporting to or from a destination beyond Chicago, Illinois.

Page 7: This page shows a general outline of the territory served by this particular carrier which is generally considered pick-up or delivery service within this confined area. This carrier operates over regular routes serving points generally within this territory.

435 Summary of Operating Expenses

Recapitulation

Pick-up and delivery expenses	$142,260.43
Administrative, general, and overhead	39,132.05
Total	$181,392.48

Details of Operating Expenses

Highway:		
Wages, truck drivers	$80,974.85	
Drivers expenses	393.90	
Office help and officers salaries	7,862.85	
Gas and oil and truck repairs	32,007.98	
Tool expense	165.65	
Rent — Elgin	4,040.10	
Rent — Chicago	673.83	
Insurance (all)	5,723.76	
Govt. pay-roll tax	2,731.88	
Depreciation (trucks, etc.)	7,085.63	
		142,260.43
Administrative:		
Wages, officers and office employees	23,588.53	
Telephones	637.47	
Printing and stationery	1,755.62	
Advertising	881.35	
Claims, L. & D.	1,060.48	
Heating and light	1,447.87	
Miscellaneous sales exp.	2,377.14	
Taxes	2,696.20	
State licenses	3,544.50	
Govt. payroll tax	560.00	
Bad debts	384.89	
Capital stock tax	198.00	
		39,132.05
		$181,392.48

436 Cost Analyses

Statement Showing Average Costs

Total cost of pick-up and delivery service		$181,392.48
Total tonnage (lbs.)	115,698,730	
Average cost per 100 pounds		.15678
Total number drivers hours	69,093	
Average hours per trip	7.3	
Total number of trips	9,461	
Average miles per trip	76	
Total number of stops	167,687	
Total truck miles	719,808	
Average cost per hour		2.625
Average cost per trip		28.88
Average cost per truck miles		.252
Average cost per stop		1.0817

437 Statement Showing Ratios of Taxes, Insurance, and Wages to Total Costs and Cost Thereof Per Truck Mile and Hundred-Pound Tonnage

	Amount	Percent
Taxes:		
Gasoline tax	$9,782.39	
Taxes (various) (no details)	2,696.20	
State licenses	3,544.50	
Govt. pay roll tax	3,291.88	
Capital stock tax	198.00	
Total taxes	19,512.97	10.7
Insurance:		
Insurance, fire and theft, cargo, etc	5,723.76	3.1
Wages and salaries:		
Wages, truck drivers	$80,974.85	
Wages, office help and officers	31,451.38	
Total wages and salaries	$112,426.23	61.9 67.4
	Cost per 100# tonnage	Cost per truck mile
Taxes	$0.0168	$0.0322
Insurance	.00048	.00093
Wages and salaries	.10566	.20275

438 Comparison of Proposed Rate With Carrier's Cost of Operation Points Served in the Traffic

Town served	Proposed rate	Cost	Town served	Proposed rate	Cost
Addison, Ill	20	$0.15678	Harvard, Ill	24	.15678
Alden, Ill	25	.15678	Hebron, Ill	24	.15678
Algonquin, Ill	21	.15678	Huntley, Ill	22	.15678
Antioch, Ill	23	.15678	Joliet, Ill	20	.15678
Aurora, Ill	20	.15678	Kankakee, Ill	25	.15678
Barrington, Ill	20	.15678	Lake Villa, Ill	22	.15678
Batavia, Ill	20	.15678	Lake Zurich, Ill	20	.15678
Beecher, Ill	20	.15678	Libertyville, Ill	20	.15678
Belmont Heights, Ill	20	.15678	Lockport, Ill	20	.15678
Bourbonnais, Ill	23	.15678	Long Lake, Ill	23	.15678
Bradley, Ill	23	.15678	Manteno, Ill	22	.15678
Braidwood, Ill	24	.15678	McHenry, Ill	22	.15678
Bristol, Ill	23	.15678	Momence, Ill	22	.15678
Carpentersville, Ill	21	.15678	Monee, Ill	20	.15678
Cary, Ill	20	.15678	Montgomery, Ill	20	.15678
Channel Lake	23	.15678	Mooseheart, Ill	20	.15678
Coal City, Ill	23	.15678	Mundelein, Ill	20	.15678
Crystal Lake, Ill	21	.15678	Naperville, Ill	20	.15678
DeKalb, Ill	25	.15678	No. Aurora, Ill	20	.15678
Dundee, Ill	21	.15678	No. Chicago, Ill	25	.15678
Elgin, Ill	25	.15678	Oswego, Ill	21	.15678
Eola, Ill	20	.15678	Peotone, Ill	20	.15678
Everett, Ill	20	.15678	Plainfield, Ill	20	.15678
Fox Lake, Ill	22	.15678	Plano, Ill	20	.15678
Fox River Grove, Ill	20	.15678	Prairie View, Ill	20	.15678
Geneva, Ill	20	.15678	Richmond, Ill	23	.15678
Glenview, Ill	20	.15678	Ridgefield, Ill	23	.15678
Grant Pk, Ill	21	.15678	Ringwood, Ill	24	.15678
Grays Lake, Ill	20	.15678	Rockdale, Ill	20	.15678
Great Lakes, Ill	20	.15678	Rondout, Ill	20	.15678
Gurnee, Ill	20	.15678	Roselle, Ill	20	.15678
Half Day, Ill	20	.15678	Round Lake, Ill	23	.15678

Town served	Proposed rate	Cost	Town served	Proposed rate	Cost
St. Charles, Ill	25	$0.15678	West Chicago, Ill	20	$0.15678
Sandwich, Ill	20	.15678	Wheeling, Ill	20	.15678
Spring Grove, Ill	23	.15678	Wilmington, Ill	23	.15678
Sycamore, Ill	25	.15678	Winfield, Ill	20	.15678
Union, Ill	23	.15678	Woodstock, Ill	30	.15678
Wauconda, Ill	20	.15678	Yorkville, Ill	22	.15678
Waukegan, Ill	25	.15678	Zion, Ill	25	.15678
Wyane, Ill	20	.15678			

439 Statement

Showing tonnage, revenue, average rate, total number shipments, number stops necessary deliver shipments contained in trucks for period week of January 17, 1938, for deliveries at Chicago. Shows also average revenue received per stop

FORWARDERS					
Total weight	Total revenue	Average rate per 100#	Total No. shipments	Number of stops to P. U. or deliver	Average revenue per stop
68,981	$184.21	$0.2697	125	12	$15.34
LOCAL					
147,939	398.21	.2691	426	401	.99
CONNECTING LINE TRUCKS					
53,671	95.07	.1771	125	106	.88

440 ELGIN STORAGE AND TRANSFER COMPANY, ELGIN, ILL.



This map shows general territory served by this carrier.

441 *Exhibit No. 8*

Witness: Gerard.

Before Interstate Commerce Commission

I. & S. Docket M-247

PROPORTIONAL CONCENTRATION AND DISTRIBUTION RATES

Analysis of revenues and expense of proposed service

WISCONSIN TARIFF POINTS—SUMMARY

Description	Total carriers shown	Wisconsin Fox Valley Transit Co.	Service Transport Co.	Royal Transit Co. Inc.	M. J. Selwert forwarding Co.
Recapitulation:					
Chicago terminal	$119,991.24	$22,839.61	$36,767.69	$24,205.38	$36,178.56
Other terminals	116,417.73	14,725.99	36,263.30	32,472.67	32,955.77
Highway line haul	275,179.41	69,603.97	43,918.27	95,402.46	66,254.71
Administration	123,305.06	30,211.37	40,638.82	28,090.16	24,364.71
Total expense	634,893.44	137,380.94	157,588.08	180,170.67	159,753.75
Total hundredweight	2,086,489	362,194	600,000	683,481	440,814
Expense per cwt	30.43¢	37.93¢	26.60¢	26.36¢	36.20¢
Total truck miles	2,127,229	497,000	426,000	712,600	491,629
Expense per truck mile	29.85¢	22.60¢	37.00¢	26.36¢	32.49¢
Hundredweight unit costs:					
Chicago terminal:					
Highway trucks	4.82¢	6.12¢	5.53¢	1.25¢	1.40¢
Contract C. & D.	11.05¢	11.92¢	18.81¢	6.44¢	14.20¢
Other deliveries	3.74¢	6.12¢	5.27¢	2.28¢	5.30¢
Average	6.94¢	8.14¢	7.55¢	3.90¢	9.68¢
Other terminals—Average	6.51¢	5.24¢	7.60¢	5.03¢	8.82¢
Highway line haul	16.98¢	24.55¢	11.45¢	17.34¢	17.70¢
Total cost (average)	30.43¢	37.93¢	26.60¢	26.36¢	36.20¢
Comparison of rate and unit costs:					
Proposed rate	34.67¢	40.00¢	30.00¢	30.00¢	35.00¢
Cost of service:					
Chicago terminal	4.82¢	6.12¢	5.53¢	1.25¢	1.40¢
Other terminal	6.51¢	5.24¢	7.60¢	5.03¢	8.82¢
Line haul	16.98¢	24.55¢	11.45¢	17.34¢	17.70¢
Total cost	28.31¢	35.91¢	24.58¢	23.62¢	27.92¢
Carrier's profit	6.36¢	4.09¢	5.42¢	6.38¢	7.08¢

442 WISCONSIN FOX VALLEY TRANSIT CO., OSHKOSH, WISCONSIN

Statement

This exhibit shows the following information on pages 2 to 13, inclusive, herein, with respect to the cost of operation of this company for the year 1937:

Page 2: This page shows a Recapitulation of the total operating expense broken down into four operations, namely;

(1) Chicago Terminal and Dock;
(2) Oshkosh and various other station terminals and docks;
(3) Highway, involving the terminal to terminal operation;
(4) Administration expense.

This page also shows a summary of the allocation of the total operating costs to these various divisions of operation.

Page 3: This page shows an itemized list of operating expenses chargeable to Chicago Dock and Terminal.

Page 4: This page shows an itemized list of operating expenses chargeable to Oshkosh and various other station terminals and docks.

Page 5: This page shows an itemized list of operating expenses chargeable to highway operations in terminal to terminal services.

Page 6: This page shows an itemized list of operating expenses chargeable to Administration and other overheads for the entire operation of this carrier.

Page 7: This page shows in detail the proper allocation of costs for Chicago Terminal segregated to show costs for three classes of service namely;

(1) Pick-Up and Delivery by Paid Out Cartage;

(2) Pick-Up and Delivery by Highway Units;

(3) Delivered to dock by others.

It will be observed that there has been allocated from the figures contained on pages 3 and 6, the ratios of costs directly chargeable to these three services on the basis of actual tonnage handled in each of the three operations. This
443 ratio is determined by reference to page 10 herein, where it is shown the total weight handled in each of these operations with the percent ratio of the total tonnage handled. This page also shows a break down of the costs to a per hundred weight basis, for each of the three classes of service.

Page 8: This page shows the costs and break downs for Oshkosh and other stations in similar manner as that explained for Page 7.

Page 9: This page shows the proper allocation of costs for the Highway (Terminal to Terminal) operations of this company. It will be observed that this page reflects the allocation of costs based upon the total tonnage handled in terminal to terminal operations, which is fully explained on page 10 herein. This allocation of cost on such items of Insurance, Administration, and items directly chargeable to the operation of highway units is necessary in order to arrive at the correct determination of the actual cost directly attributable to the cost of operation of highway units in Terminal to Terminal services.

Page 10: This page shows the tonnage ratios in various operations with relationship to the total tonnage handled.

Page 11: This page indicates the proportion of Taxes, Insurance, Wages, and Salaries to the total operating costs of this carrier, with these figures broken down into cost per mile and cost per hundred pounds for these three items.

Page 12: This page shows routes over which the carrier operates motor vehicles under authorization of certificate issued by the Interstate Commerce Commission.

Page 13: This page shows a comparison of the costs of operation with the proposed rates from and to various points along the route of operation. It will be observed that the proposed rate will produce revenue in excess of the proposed rate.

444 **Summary of Operating Expenses, 1937**

Recapitulation

Chicago, terminal and dock	$22,839.61	
Oshkosh and various other station terminals and docks	14,725.00	
Highway, between terminals	69,603.97	
Administration	30,211.37	$137,380.94

SUMMARY OF COST ANALYSES, THIS EXHIBIT

Chicago:		
Local pick-up and delivery by paid-out cartage	15,030.74	
Local pick-up and delivery by highway units	13,679.39	
Delivered to dock by others	775.98	29,486.11
Oshkosh and various stations:		
Local pick-up and delivery by local units	2,095.64	
Local pick-up and delivery by paid-out cartage	6,612.84	
Local pick-up and delivery by highway units	10,247.11	18,955.59
Highway, terminal to terminal		88,939.24
Grand total		$137,380.94

445 **Summary of Operating Expenses—Chicago Dock and Terminal**

Paid out cartage	$7,315.30	
Labor, pick-up, and delivery service	9,878.28	
Salaries, office employees	4,622.33	
Rent, terminal offices and dock	997.41	
Heating expense	26.29	$22,839.61

446 **Oshkosh and Various Station Terminals**

Paid out cartage	$3,546.41	
Labor, pick-up and delivery service	6,585.52	
Rent, offices and dock	1,379.79	
Salaries, office help	3,081.55	
Heating expenses	132.72	$14,725.99

447 **Highway—Terminal to Terminal**

Wages, drivers, etc	$14,356.19	
Gasoline	16,929.97	
Oils, grease, etc	1,022.62	
Repairs, trucks, etc	7,544.07	
Insurance:		
P. L.—P. D., fire and theft	5,003.82	
Cargo	1,314.42	
Ton-mile tax, Wisconsin	4,161.92	
Ton-mile tax, Illinois	1,577.00	
Depreciation, trucks	7,765.19	
Licenses and permits	2,089.61	
Tires and tubes	3,260.60	
Garage maintenance	4,000.06	

448 **Administrative Expenses**

Solicitation	$5,382.50	
Officers' salaries	2,093.33	
Salaries, office employees	2,567.96	
Telephone and telegraph	2,015.45	
Stationery and office supplies	1,580.06	
Depreciation, equipment, F. & F., bldgs	497.77	
Subscriptions, dues, and fines	1,254.31	
Travelling expenses	3,599.11	
Compensation insurance	2,297.74	
Light	64.31	
Postage	409.92	
Advertising	872.74	
Professional expenses	137.19	
Nonproductive labor	992.08	
Entertainment expense	582.06	
Bank charges	591.39	
Miscellaneous expenses	766.24	
Claims, L. & D	1,477.51	
Unemployment insurance	1,507.39	
Personal property tax	7.00	
Interest and misc. expenses	1,515.31	$30,211.37

449 **Cost Analysis**

CHICAGO TERMINAL

Items of cost	Local pick-up and delivery by paid out cartage	Local pick-up and delivery by highway units	Delivered to dock by others
Cartage paid out	$7,315.30		
Labor pick-up and delivery service	3,437.64	6,094.90	345.74
Salaries, office employees	1,908.57	2,851.98	161.78
Rent, terminal and office	347.10	615.40	34.91
Heating expense	9.15	16.22	.92
Administrative expense	2,312.08	4,100.89	232.63
Total cost	$15,030.74	13,679.39	775.98
Total tonnage (lbs.)	12,606,300	22,345,221	1,267,679
Cost per 100 lbs.	$0.1192	$0.0612	$0.0612

450 OSHKOSH AND INTERMEDIATE STATIONS

Paid-out cartage		$3,546.41	
Labor, pick-up and delivery service	$895.63	1,310.52	$4,379.37
Rents	187.65	274.58	917.56
Salaries, office employees	419.09	613.23	2,049.23
Heating expense	18.05	26.41	88.26
Administration	575.22	841.69	2,812.69
Total cost	$2,095.64	$6,612.84	$10,247.11
Total tonnage	4,912,000	7,210,800	24,096,600
Cost per 100 pounds	$0.0426	$0.0917	$0.0425

451 Highway—Between Terminals

Wages	$14,356.19	
Gasoline	16,929.97	
Oils and grease	1,022.62	
Repairs—trucks, etc	7,544.07	
Insurance, P. L. P. D., fire and theft	5,003.82	
Ton-mile tax—Wisconsin	4,161.92	
Ton-mile tax—Illinois	1,577.00	
Depreciation (trucks)	7,765.19	
Licenses and permits	2,089.61	
Cargo insurance	1,314.42	
Tires and tubes	3,260.60	
Garage maintenance	4,000.06	
Drivers room rent	578.50	
Administration	19,335.27	$88,939.24

Total tonnage—pounds	36,219,400
Tonnage cost per 100 pounds	$0.2455
Total mileage	497,000
Cost per mile	$0.17895

452 TONNAGE SUMMARY, 1937

TONNAGE RATIO

Description of tonnage	Chicago	Percent	Oshkosh and other station	Percent
(1) Picked up and/or delivered by local units			4,912,000	13.6
(2) Picked up and/or delivered by paid-out cartage	12,606,500	34.8	7,210,800	19.9
(3) Picked up and/or delivered by highway units	22,345,221	61.7	24,096,600	66.5
(4) Delivered to dock by others	1,267,679	3.5		
Total tonnage (lbs.)	36,219,400	100	36,219,400	100

453 Statement Showing Ratios of all Taxes, Insurance, and Direct Labor Costs to Total Operating Expenses and Cost Thereof Per Mile and and Per Hundred-Pound Tonnage

	Amount	Percent
Taxes:		
State and Federal gasoline tax	$5,788.99	
Ton-mile tax—Wisconsin	4,161.92	
Licenses and permits	2,089.61	
Ton-mile tax, Illinois	1,577.00	
Personal property tax	7.00	
Social security taxes, etc	1,307.39	
Total taxes	15,131.91	11.01
Insurance:		
P. D.—P. L., fire and theft	5,003.82	
Cargo insurance	1,314.42	
Workmen's compensation	2,297.74	
Total insurance	8,615.98	6.27
Wages and salaries:		
Wages, chauffeurs, etc	14,356.19	
Pick up and delivery labor	16,463.80	
Officers salaries	2,093.33	
Office employees salaries	10,271.84	
Nonproductive labor	992.08	
Total wages and salaries	44,177.24	32.15
	Cost per 100# tonnage	Cost per truck mile
Taxes	$0.041	$0.030
Insurance	.024	.017
Salaries and wages	.122	.088

454 Routes

The Following Routes are Those Which This Carrier Holds Certificates from I. C. C. to Operate Motor Vehicles

Commodities generally, except those of unusual value, and except livestock, high explosives, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading.

Between Green Bay, Wisconsin and Chicago, Illinois, as follows:

From Green Bay over U. S. Highway 41 to Fond du Lac, Wisconsin, thence over Wisconsin Highway 55 to Milwaukee, Wisconsin, thence over U. S. Highway 41 via Rosecrans, Illinois, to junction Illinois Highway 42A, and thence over Illinois Highway 42A to Chicago (also from Rosecrans over U. S. Highway 41 to Chicago):

From Green Bay to Rosecrans as specified above, thence over Illinois Highway 173 to Zion, Illinois, and thence over Illinois highway 42 to Chicago; and

Return over these routes to Green Bay.

All intermediate points.

Off-route points: Combined Locks and Kimberly, Wisconsin, and those in Illinois south of Illinois Highway 58, east of U. S. Highway 45, and north of U. S. Highway 30.

455 COMPARISON OF PROPOSED RATE WITH ACTUAL COST OF OPERATION

Town served	Proposed rate	Cost of operation (1)	Cost of operation (2)
Appleton, Wisconsin	0.40	$0.3898	$0.2826
Combined Locks, Wisconsin	.40	.3898	.2826
DePere, Wisconsin	.40	.3898	.2826
Fond du Lac, Wisconsin	.40	.3898	.2826
Green Bay, Wisconsin	.40	.3898	.2826
Kaukauna, Wisconsin	.40	.3898	.2826
Kimberly, Wisconsin	.40	.3898	.2826
Menasha, Wisconsin	.40	.3898	.2826
Nennah, Wisconsin	.40	.3898	.2826
Oshkosh, Wisconsin	.40	.3898	.2826

(1) Where pick-up and delivered by paid out cartage, see pages 7, 8, 9.

Chicago	$0.1192
Oshkosh	.0917
Highway	.1789
	.3898

(2) Where pick-up and delivery by highway units, see pages 7, 8, 9.

Chicago	$0.0612
Oshkosh	.0425
Highway	.1789
	$ .2826

456 SERVICE TRANSPORT COMPANY, RACINE, WISCONSIN

Statement

This exhibit shows the following information on pages 2 to 12 inclusive herein with respect to the cost of operation of this company for year 1937:

Page 2: This page shows a Recapitulation of the total operating expenses broken down into four operations, namely: Highway, involving the terminal to terminal operation; Racine Terminal and Dock Expenses; Chicago Terminal and Dock Expenses; Administration cost.

This page also shows a summary of the allocation of the total operating costs to these various divisions of operation.

Page 3: This page shows an itemized list of operating expenses chargeable to Highway operations in Terminal to Terminal services.

Page 4: This page shows an itemized list of operating expenses chargeable to Racine Terminal and Dock expenses.

Page 5: This page shows an itemized list of operating expenses chargeable to Chicago Terminal and Dock expenses.

Page 6: This page shows an itemized list of operating expenses chargeable to Administration and overheads for the entire operation of this company.

Page 7: This page shows the proper allocation of costs for the Highway (Terminal to Terminal) operations of this company. It will be observed that this page reflects the allocation of costs based upon the mileage traveled in the Terminal to Terminal operations in comparison with the total miles traveled, which is fully explained on page 10 herein, under the heading of "Mileage Ratios". This allocation of cost on such items of Insurance, Administration and items directly chargeable to the operation of highway units is necessary in order to arrive at the correct determination of the actual cost directly attributable to the cost of operation of highway units in Terminal to Terminal services.

457 Page 8: This page shows in detail the proper allocation of costs for Racine Dock and Terminal with three costs segregated to show charges for three classes of service, namely; Pick-Up and Delivery by Highway Units; Pick-Up and Delivery by Paid Out Cartage, (which represents cartage performed by others for which this company pays for the direct delivery or pick-up services); Pick-Up and Delivery By Local Units, owned and operated by this company. It will be observed that there has been allocated from the figures contained on pages 4 and 6 the ratios of costs directly chargeable to these three services on the basis of the actual tonnage handled in each of the three operations. This ratio is determined by reference to page 10 herein, wherein it is shown the total weight handled in each of these operations with the per cent ratio of the total tonnage handled. This page also shows a break down of these costs to a per hundred weight basis in addition to other basis, which determines the actual cost of pick-up and delivery services at Racine in the three operations employed by this company.

Page 9: This page shows the same items with the same type of break down that are directly chargeable to Chicago Terminal and Dock expenses, including picking up and delivering freight by the methods indicated employed by this company. The break downs and ratio relationship of cost is distributed in the same manner as employed in connection with the cost shown on page 8, which has been fully explained.

Page 10: This page shows the Ratio of Mileage in various operations with relationship with the total miles traveled, also tonnage relationship in various operations at various stations with relationship to the total tonnage handled.

Page 11: This page indicates the proportion of Taxes, Insurance, Wages and Salaries to the total operating costs of this company with these figures broken down into cost per mile, and cost per one hundred pounds for these three items.

Page 12: This page shows in detail the equipment owned and operated by this company and used in transportation service, show-

ing identification to the Vehicle, Capacity, Date Purchased, Original Cost and the amount of Depreciation chargeable to the 1937 operations.

Page 13: This page shows representative origins or destinations to or from which this carrier transports property in connection with Forwarding or Carloading companies which will show
458 that certain of this traffic cannot be handled by connecting line trucks; for instance, to the Pacific Co'st there is no truck service available from or to Racine, Wisconsin; to eastern seaboard points there is only one or two motor connections available out of Chicago, and these connections restrict application of connecting line business to a point where it is impracticable to transfer shipments originating at or destined to Racine, Wisconsin.

Page 14: This page shows an analysis of tonnage transported by this carrier for the week of April 15, 1937, broken down to show the total weight south bound and north bound in the various services indicated thereon, showing the number of shipments handled, the number of stops required to pick-up and deliver, and also showing the average number of shipments per stop. This page will indicate by observing the figures shown in connection with Forwarder's tonnage, that because of the overhead control and wide range of service obtainable in connection with the forwarder that the motor carrier pick-ups and/or delivers numberous shipments from one shipper to one Carloader or Forwarder which naturally reduces the cost of handling.

Page 15: This page shows a comparison of the costs of operation in the various services necessary in connection with the handling of traffic under the proposed rate in comparison with the proposed rate from and to Racine, Wisconsin. It will be observed that the proposed rate will produce revenue much in excess of the proposed rate.

Page 16: This page shows a summary of all tonnage handled by this carrier between the various stations in each direction, also the amount of tonnage handled in connection with Carloading or Forwarding companies together with the average weight per truck.

Page 17: This page shows a map indicating the principal points served by this carrier with the highway distance involved.

459 Summary of Operating Expenses 1937

RECAPITULATION

Highway, terminal to terminal		$43,918.27
Racine, terminal and dock		36,263.30
Chicago, terminal and dock		36,767.69
Administration		40,638.82
Total operating expenses		157,588.08

SUMMARY OF COST ANALYSES, THIS EXHIBIT

Highway, terminal to terminal		68,707.95
Racine:		
Local pick-up and delivery by highway units	$21,828.03	
Local pick-up and delivery by paid-out cartage	1,206.56	
Pick-up and delivery by local units	20,543.70	
		43,578.29
Chicago:		
Local pick-up and delivery by highway units	25,009.85	
Local pick-up and delivery by paid-out cartage	15,355.85	
Delivered to dock by others	4,936.14	
		45,301.84
Grand total		157,588.08

460 Details of Operating Expenses, 1937

HIGHWAY

Wages, drivers, loaders and helpers	$12,662.40	
Wages, mechanics	2,830.40	
Unemployment insurance	309.86	
Federal old age pension	154.43	
Compensation insurance	759.75	
Cargo insurance, (tonnage basis)	1,307.75	
P. L. and P. D. insurance, all trucks	1,768.62	
Fire and theft insurance	121.77	
Gas and oil, including tax	7,089.91	
Truck repairs and maintenance	5,325.61	
Tires and tubes	2,769.48	
Taxes, licenses, etc	4,205.14	
Court fines (highway violations)	295.00	
Depreciation (equipment)	4,318.15	$43,918.27

461 RACINE TERMINAL

Wages, drivers, loaders, and helpers	$8,129.86	
Wages, dock helpers and loaders	9,080.37	
Wages, dock foreman	6,462.00	
Wages, mechanics	173.77	
Unemployment insurance	476.92	
Federal old-age pension	238.46	
Compensation insurance	1,170.90	
Cargo insurance	385.89	
P. L. and P. D. insurance (all trucks)	521.89	
Fire and theft insurance (equipment)	35.93	
Cartage paid out	791.44	
Gas and oil, includes tax	2,092.10	
Rent	1,800.00	
Truck repairs and maintenance	1,571.49	
Tires and tubes	817.22	
Taxes, licenses, etc	1,240.86	
Depreciation (equipment)	1,274.20	$36,263.30

462 CHICAGO TERMINAL

Salaries, office help	$3,505.00	
Wages, drivers, loaders and helpers	9,174.72	
Unemployment insurance	253.60	
Federal old age pension	126.80	
Compensation insurance	613.49	
Cargo insurance	450.21	
P. L. and P. D. insurance, all trucks	608.87	
Fire and theft insurance	41.93	
Cartage paid out	12,394.16	
Gas and oil, including tax	2,440.81	
Rent	1,437.00	
Truck repairs and maintenance	1,833.42	
Tires and tubes	953.43	
Taxes, licenses, etc	1,447.67	
Depreciation (equipment)	1,486.58	$36,767.69

463 ADMINISTRATION

Officers salaries	$17,500.00	
Office employees salaries	9,928.84	
Unemployment insurance	548.63	
Federal old-age pension	157.20	
Compensation insurance	46.91	
Other insurance (auto, etc.)	285.10	
Office supplies, printing, etc	2,782.13	
Telephone service	2,064.94	
Heat and light	1,185.44	
Advertising	2,659.75	
Traveling expenses	1,786.60	
Claims L. & D	575.05	
Legal expense	164.50	
Tariffs	810.48	
Depreciation, furniture and fixtures	163.25	$40,638.82

464 Cost Analysis

Highway—Terminal to Terminal

MILEAGE AND TONNAGE COSTS

Item of cost:	
Wages, drivers, loaders, and helpers	$12,662.40
Wages, mechanics	2,830.40
Social security taxes:	
Unemployment insurance	309.86
Old-age pension	154.43
Compensation insurance	759.75
Cargo insurance	1,307.75
P. D. and P. L. insurance, all trucks	1,768.62
Fire and theft insurance, equipment	121.77
Gas and oil, including tax	7,089.91
Truck repairs and maintenance	5,325.61
Tires and tubes	2,769.48
Taxes, licenses, etc	4,205.14
Court fines, highway, violations (State)	295.00
Depreciation (equipment)	4,318.15
Administration	24,789.68
Total costs	$68,707.95
Total mileage	261,560
Cost per mile	$.2626
Total tonnage (lbs.)	60,000,002
Cost per 100 lbs	$.1145

465 **Racine Terminal**

MILEAGE AND TONNAGE COSTS

Item of cost	Local pick-up and delivery by highway units	Local pick-up and delivery by paid-out cartage	Pick-up and delivery by local units
Wages, drivers, loaders, and helpers	$4,146.23	$81.30	$3,902.33
Wages, dock helpers	4,630.99	90.80	4,358.58
Wages, dock foreman	3,295.62	64.62	3,101.76
Wages, mechanics	88.62	1.74	83.41
Social-security tax, unemployment ins	243.23	4.77	228.92
Social-security tax, federal old-age pension	121.62	2.38	114.46
Compensation insurance	597.16	11.71	562.03
Cargo insurance	196.80	3.86	185.23
P. L. and P. D. insurance, all trucks	266.16	5.22	250.51
Fire and theft insurance	18.32	.36	17.25
Cartage paid out		791.44	
Gas and oil (includes tax)	1,066.97	20.92	1,004.21
Rent	918.00	18.00	864.00
Truck repairs and maintenance	801.46	15.71	754.32
Tires and tubes	416.78	8.17	392.27
Taxes, licenses, etc	632.84	12.41	595.61
Depreciation (equipment)	649.84	12.74	611.62
Administration	3,730.65	73.15	3,511.19
Total costs	21,821.29	1,219.30	20,537.76
Total mileage	38,765		37,245
Cost per mile	$.563		$.551
Total tonnage (lbs.)	30,700,000	600,000	28,700,002
Cost per 100 lbs	$.071	$.2032	$.0715

(Revised)

466 **Chicago Terminal**

MILEAGE AND TONNAGE

Items	Local pick-up and delivery by highway units	Delivered to dock by others	Paid out cartage
Wages, office help	$2,693.80	$315.45	$525.73
Wages, drivers, loaders, and helpers	6,972.79	825.72	1,376.21
Unemployment insurance	192.74	22.82	38.04
Federal old-age pension	96.37	11.41	19.02
Compensation insurance	466.25	55.22	92.02
Cargo insurance	342.16	40.52	67.53
P. L. and P. D. insurance, all trucks	462.74	54.80	91.33
Fire and theft insurance (equipment)	31.87	3.77	6.29
Cartage paid out			12,394.16
Gas and oil (includes tax)	1,855.02	219.67	369.12
Rent	1,092.12	129.33	215.55
Truck repairs and maintenance	1,393.40	165.01	275.01
Tires and tubes	725.61	85.81	143.01
Taxes, licenses, etc	1,100.23	130.29	217.15
Depreciation equipment	1,129.80	133.79	222.99
Administration	6,485.95	768.08	1,280.12
Total costs	$25,009.85	$2,961.69	$17,330.30
Total mileage	88430		
Cost per mile	$0.2828		
Total tonnage	45,174,936	5,612,000	9,213,066
Cost per 100 pounds	$.0553	$.0527	$.1881

467 Tonnage and Mileage Summary, 1937

MILEAGE RATIOS

Racine	76,010 miles	18%
Chicago	88,430 miles	21%
Highway	261,560 miles	61%
Total	426,000 miles	100%

TONNAGE RATIOS (IN LBS.)

Chicago:		
Delivered by highway units	45,174,936 pounds	76%
Delivered to dock by others	5,612,000 pounds	9%
Paid out cartage	9,213,066 pounds	15%
Total	60,000,002 pounds	100%
Racine:		
Delivered by highway units	30,700,000 pounds	51%
Delivered by paid out cartage	600,000 pounds	1%
Delivered by local units	28,700,002 pounds	48%
Total	60,000,002 pounds	100%

468 STATEMENT SHOWING RATIO OF ALL TAXES, INSURANCE AND DIRECT LABOR COSTS, TO TOTAL OPERATING EXPENSES, AND COST PER MILE AND PER 100 POUNDS

	Amount	Percent of total operating costs
Taxes:		
Social Security Act:		
Unemployment insurance	$1,589.01	
Federal old age pension	676.89	
State and federal gas tax (estimated)	3,700.00	
Vehicle licenses, taxes, etc	6,893.67	
Total taxes	12,859.57	8.16
Insurance:		
Compensation	2,391.05	
Cargo	2,143.85	
B. L. and P. D., all trucks	2,899.38	
Fire and theft (equipment)	199.63	
Other insurance	265.10	
Total insurance	8,099.01	5.13
Wages and salaries:		
Officers salaries	17,500.00	
Office help	13,333.84	
Drivers, loaders, helpers, etc	48,513.52	
Total wages, etc	79,447.36	50.41
	Cost per mile	Cost per cwt. tonnage
Taxes	$0.03	$0.0214
Insurance	.019	.0134
Wages	.1864	.1324

239. SCHEDULE OF DEPRECIATION AS OF DECEMBER 31, 1937

Amt. dep. 1937	Trucks	Model	Motor	Serial No.	Capacity	Purchased	Cost
L $91.26	Chev. (6)	1937	T-920472	21-SD-07-9282.	1½ Ton	8/8/37	$826.10
	White (4)	51-A-1929	1058	160313	2½ Ton	9/29	5,000.00
	White (4)	51-A-1928	3966	146852	2½ Ton	2/28	5,000.00
L 288.33	I. H. C. (6)	C-30-1936	27920	27013	1½ Ton	5/18/36	865.00
	Tractor						
	I. H. C. (6)	B-4-1933	FAB-1339	659	2½ Ton	5/31/33	1,416.00
93.00	Ford (8)	40-1934	BB-824955		1½ Ton	5/3/34	846.00
487.28	I. H. C. (6)	C-40-1934	15439	2750	2½ Ton	11/10/34	1,598.03
472.97	I. H. C. (6)	C-40-1934	17080	3197	2½ Ton	11/20/34	1,551.20
494.70	I. H. C. (6)	C-40	FAB-3-17074	3362	2½ Ton	3/14/35	1,650.00
428.72	I. H. C. (6)	C-40	26821	6460	2½ Ton	7/15/35	1,479.60
491.87	I. H. C. (6)	C-40	31328	8365	2½ Ton	11/5/35	1,475.00
299.83	Ford (8)	1936	BB-2595873		1½ Ton	3/36	1,100.00
299.83	Ford (8)	1936	BB-2688954		1½ Ton	3/4/36	1,100.00
462.50	White (6)	830-1937	13-A-1371	202253	2½ Ton	5/1/37	1,375.00
246.57	Int'l. (6)	1937	4767	3808	2½ Ton	8/37	1,613.74
	Trailer						
166.73	Highway	77-C-1937		37186	3 Ton 22'	5/1/37	941.50
95.48	Highway	75-A-1932		27261	3 Ton 18'	6/14/33	842.00
325.00	Badger	K-34		409	3 Ton 18'	5/19/34	1,300.00
250.00	Badger	K-34-1934		52234	3 Ton 19'	11/21/34	1,000.00
250.00	Badger	1935		50835	3 Ton 19'	4/15/35	1,000.00
162.50	Kingham	DF-3		4201	3 Ton 18'	2/23/35	650.00
237.50	Badger	K-345-1935		60035	3 Ton 20'	7/23/35	950.00
237.50	Badger	1935		70035	3 Ton 20'	10/1/35	950.00
237.50	Fruehauf	1936-618		F-34707	3 Ton 20'	3/10/36	1,150.00
237.50	Fruehauf	1936-618		F-34990	3 Ton 20'	3/10/36	1,150.00
284.38	Trailmobile	T-32-1937		18664	3 Ton 24'	2/11/37	1,300.00
135.21	Trailmobile	1937		20307	3 Ton	8/37	1,300.00
135.21	Trailmobile	1937		20562	3 Ton	8/37	1,300.00
167.76	Highway			27589	3 Ton	5/33	1,592.20
[1]$7,078.93							

[1] Total depreciation 1937.

470 STATEMENT SHOWING REPRESENTATIVE DESTINATIONS AND ORIGINS OF SHIPMENTS RECEIVED FROM OR DELIVERED TO CARLOADING COMPANIES, ALSO WEIGHTS OF INDIVIDUAL SHIPMENTS

Origin or destination	Weight	Origin or destination	Weight
Truck No. 10, April 16; 1937		Truck No. 10, Apri 16, 1937	
New Haven, Conn	32	Canton, Ohio	29
New York City, N. Y	118	New Haven, Conn	36
Elmira, N. Y	95	Toledo, Ohio	87
Harrisburg, Pa	189	Harrisburg, Pa	112
Bridgeport, Conn	80	Newark, N. J	120
Oakland, Calif	116	Columbus, Ohio	101
Evansville, Ind	190	Mansville, N. J	28
Brideville, Pa	115	Girard, Pa	112
Canton, Ohio	105	Buffalo, N. Y	112
Pasadena, Calif	60	Massillon, Ohio	155
Indianapolis, Ind	769	Westerville, Ohio	480
Evansville, Ind	540	Cleveland, Ohio	2,378
Trenton, N. J	1,484	Toledo, Ohio	892
New Britain, Conn	480	Dayton, Ohio	230
Detroit, Mich	64	Hagerstown, Ind	44
Newark, N. J	21	Toledo, Ohio	65
Newark, N. J	170	Newark, N. J	255
Newark, N. J	85	Dayton, Ohio	70
Harrisburg, Pa	97	Harrisburg, Pa	121
Detroit, Mich	100	Cincinnati, Ohio	35
Columbus, Ohio	108	Total weight	10,480 Pounds

471 Chicago to Racine

STATEMENT

[Showing tonnage for week of April 15, 1937, broken down to show local, connecting line truck, and forwarder tonnage, together with average number of shipments per stop in these three services]

	Weight	Number shipments	Number stops	Average number shipments per stop
Local—Delivered or picked up by highway units	SB 41,345	14	14	1
	NB 32,645	9	9	1
Local—Delivered or picked up by local cartage	SB 16,502	29	29	1
	NB 27,771	31	31	1
Truck interline:				
Delivered by highway units	SB 49,662	20	14	1⅓
	NB			
Delivered by local cartage	SB 1,287	3	3	1
	NB			
Forwarder—Delivered by highway units	SB 79,760	156	10	15⅗
	NB 10,480	13	2	6½

472 Comparison of Cost With Proposed Rate

Proposed rate between Racine and Chicago, 30 cents per 100 pounds

Cost where pick-up and delivery is accomplished with highway units		Cost where pick-up or delivery by local units at Racine and delivery or pick-up by highway units at Chicago	
$0.071	Racine (page 8).	$0.0715	Racine (page 8).
.1145	Highway (page 7).	.1145	Highway (page 7).
.0553	Chicago (page 9).	.0553	Chicago (page 9).
.2408	Total.	.2413	Total.
.30	Rate.	.30	Rate.
.0592	In excess of cost.	.0587	In excess of cost.

473 Tonnage Handled 1937

ALL TONNAGE

Racine to Chicago	32,816,657—55% of total
Chicago to Racine	27,183,345—45% of total
Total all tonnage	60,000,002

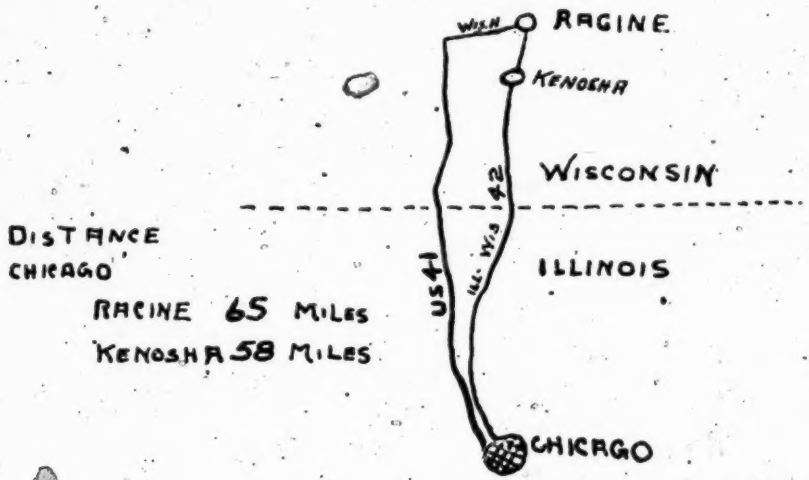
CARLOADING AND FORWARDERS

Racine to Chicago	15,787,974
Chicago to Racine	5,250,914
Total forwarding	21,038,888
Average weight per truck all tonnage	14,910 Lbs.
Average weight Racine to Chicago	16,366 Lbs.
Average weight Chicago to Racine	13,510 Lbs.

474 Service Transport Company
Racine, Wisconsin

Map

Showing routes used by Service Transport Co., indicating principal points served on these routes.



475 ROYAL TRANSIT CO., INC., MILWAUKEE, WISCONSIN

Statement

This exhibit shows the following information on pages 2 to 15 inclusive herein with respect to the cost of operation of this company for the year 1937.

Page 2. This page shows a recapitulation of total operating expenses broken down into four operations, namely:

(1) Chicago Station;
(2) Milwaukee Station;
(3) Highway, Terminal to Terminal;
(4) Administration.

This page also shows a summary of the allocation of the total operating costs to these various divisions of operation.

Page 3. Chicago Station.

Page 4. Milwaukee Station.

Page 5. Highway, Terminal to Terminal.

Page 6. Administration.

Pages 3 to 6 inclusive show itemized lists of operating expenses chargeable to the respective operation designated.

Page 7. This page shows in detail the proper allocation of costs for Chicago Terminal, segregated to show costs for three classes of service, namely:

(1) Pick-Up and Delivery by local cartage;
(2) Pick-Up and Delivery by highway units;
(3) Delivered to dock by others.

It will be observed that there has been allocated from the figures contained on pages 3 and 6, the ratios of costs directly chargeable to these three services on the basis of the actual tonnage handled in each of the three operations. This ratio is determined by reference to page 10 herein. This page also shows break down of cost per hundred pound tonnage, for each of the three classes of service.

Page 8. This page shows for Milwaukee Station similar data as that shown for Chicago Station, with the services confined to but two classes, also showing cost per hundred pound tonnage.

476 Page 9. This page shows the proper allocation of costs for the Highway, (Terminal to Terminal) operations of this company. It will be observed that this page reflects the allocation of costs based upon the mileage traveled in the terminal to terminal operations in comparison with the total miles traveled, which is fully explained on page 11 herein.

This allocation of cost on such items as Insurance, Administration and items directly chargeable to the operation of Highway units is necessary in order to arrive at the correct determi-

nation of the *actual* cost directly attributable to the cost of operation of highway units in Terminal to Terminal services.

Page 10. This page shows an analysis of Tonnage handled, separated into the various classes of service with percentage ratios for each class of service.

Page 11. This page shows analysis of mileage and trips made, together with percentage ratios.

Page 12. This page shows the proportion of Taxes, Insurance, Wages and Salaries to the total operating costs of this carrier with these figures broken down into cost per hundred pounds and cost per mile.

Pages 13 and 14. These pages show in detail a summary of tonnage showing direction of haul, and separated between Local, Connecting Lines and Steel, for the three year period, 1935 to 1937 inclusive.

Page 15. This page shows a comparison of the proposed rates with the cost of operation, in the various services. It will be observed that the proposed rate will produce revenue much in excess of the costs.

477 Summary of Operating Expenses
1937

RECAPITULATION

Chicago station	$24,205.38	
Milwaukee station	32,472.67	
Highway	95,402.46	
Administration	28,090.16	$180,170.67

SUMMARY OF COST ANALYSES, THIS EXHIBIT

Chicago station:		
(A) Picked up and delivered by local cartage	$21,158.56	
(B) Picked up and delivered by local units	2,471.85	
(C) Delivered to dock by others	3,623.82	27,254.22
Milwaukee station:		
(A) Picked up and delivered by local cartage	31,788.90	
(B) Picked up and delivered by highway units	2,589.28	34,378.18
Highway, terminal to terminal		118,538.26
Total		180,170.67

478 CHICAGO STATION

Wages, office help, etc	$3,532.52	
Wages, dock help	4,859.81	
Cartage paid out	12,496.87	
Light and heat	405.65	
Social security tax	109.21	
Compensation insurance	402.90	
Unemployment insurance	218.42	
Cartage paid (steel)	1,100.00	
Rent	1,080.00	$24,205.38

479 MILWAUKEE STATION

Wages, office help, etc		$3,660.00	
Cartage paid out		13,488.49	
Light and Heat		205.66	
Social security tax, etc		300.84	
Compensation insurance		1,469.68	
Rent		640.00	
Wages, helpers, etc		12,500.00	
Licenses, local, P. U. and del. units		208.00	$32,472.67

480 HIGHWAY—TERMINAL TO TERMINAL

Wages, chauffeurs and helpers		$30,668.75	
Social security tax		188.92	
Rental paid, leased trucks		21,166.64	
Leased trucks, equipment only		4,500.00	
Gas and oil, inc. tax		9,606.24	
Repairs and parts		6,513.30	
Tire and tubes		2,751.36	
Licenses, ton mile taxes, etc		12,074.93	
P. L. P. D. comp., fire and cargo insurance		4,263.68	
Depreciation, equipment		3,668.64	$95,402.46

481 ADMINISTRATIVE

Telephone, etc		$2,623.21	
Salaries, officers		8,948.22	
Sales expenses:			
Wages, Chicago	$2,500.00		
Expenses, Chicago	1,869.08		
Wages, Milwaukee	4,283.65		
Expenses, Milwaukee	496.18	9,148.91	
Claims, L. and D		1,100.81	
Advertising		1,014.68	
Donations		65.00	
Bad Debts		227.64	
Stationery and printing		1,286.12	
Tariffs		696.59	
Memberships, associations		486.00	
Misc. (office exp., cars, etc.)		2,372.98	
Depreciation, furn. and fixt		120.00	$28,090.16

482 **Cost Analysis**

CHICAGO TERMINAL

Items of cost	Picked up and delivered by local cartage	Picked up and delivered by highway units	Delivered to dock by others
Wages, office help, etc	$1,695.61	$1,024.43	$812.48
Wages, dock help	3,285.23		1,574.58
Cartage paid out	12,496.87		
Cartage paid out (steel)	1,100.00		
Light and heat	274.22		131.43
Social security tax, etc	73.82		35.39
Compensation insurance	272.36		130.54
Unemployment insurance	147.65		70.77
Rent	518.40	313.20	248.40
Depreciation, equipment		352.19	
Administration expenses	1,294.40	782.03	620.23
Total costs	21,158.56	2,471.85	3,623.82
Total tonnage	32,824,448	19,640,000	15,883,667
Cost per tonnage, per 100#	$0.0644	$0.0125	$0.0228

483 MILWAUKEE STATION

Items of cost	Picked up and delivered by local cartage	Picked up and delivered by highway units
Wages, office help, etc	$2,598.60	$1,061.40
Cartage paid out	13,488.49	
Light and heat	146.02	59.64
Social security tax, etc	213.60	87.24
Compensation insurance	1,043.48	426.20
Rent	454.40	185.60
Wages, helpers, etc	12,500.00	
Licenses, local, P. U. and del. units	147.68	60.32
Depreciation, equipment		220.11
Administration	1,196.63	488.77
Total costs	31,788.90	2,589.28
Total tonnage	48,632,221	19,715,894
Cost for tonnage per 100#	$0.0653	$0.0131

484 HIGHWAY—TERMINAL TO TERMINAL

Items of cost	Amount
Leased trucks, rental paid	$21,166.64
Leased trucks, (equipment only)	4,500.00
Wages, chauffeurs and helpers	30,668.75
Gas and oil, including tax	9,606.24
Repairs and parts	6,513.30
Tires and tubes	2,751.36
Licenses, ton-mile taxes, etc	12,074.93
Insurance, P. L., P. D., comp., fire, and cargo	4,263.68
Social security taxes, etc	188.92
Depreciation, equipment	3,096.34
Administration expenses	23,708.10
Total costs	$118,538.26
Total truck miles	712,600
Total trips	7,126
Total tonnage (lbs.)	68,348,115
Cost per truck mile	$0.1663
Cost per trip	$16.6346
Cost per 100 lbs. tonnage	$0.1734

485 ANALYSIS OF TONNAGE, YEAR 1937

	Pounds
Milwaukee to Chicago, local	10, 543, 167
Milwaukee to Chicago, conn. lines	10, 735, 440
Chicago to Milwaukee, local	15, 344, 947
Chicago to Milwaukee, conn. lines	15, 883, 667
Chicago to Milwaukee, steel	15, 840, 894
Total	68, 348, 115

	Chicago	Percent	Milwaukee	Percent
Picked up and delivered by local cartage	32, 824, 448	48	48, 632, 221	71
Picked up and delivered by highway units	19, 640, 000	29	19, 715, 894	29
Delivered to dock by others	15, 883, 667	23		
Total	68, 348, 115	100	68, 348, 115	100

486L ANALYSIS OF TRUCK TRIPS AND MILEAGE, YEAR 1937

Number of truck trips, including direct pick-up or deliveries	7, 126	
Number of miles per trip	100	
Number of truck-miles, highway, In Terminal to terminal	712, 600	84. 4%
Number of truck-miles in Milwaukee, delivery or pick-up service	50, 600	6. 0%
Number of truck-miles, in Chicago delivery or pick-up service	81, 000	9. 6%
Total truck-miles	844, 200	100%

487 STATEMENT SHOWING RATIO OF ALL TAXES, INSURANCE AND DIRECT LABOR COSTS, TO THE TOTAL OPERATING EXPENSES AND COST THEREOF, PER TRUCK MILE: PER TRIP, AND PER ONE HUNDRED POUND TONNAGE

Items	Amount	Percent of total cost
Taxes:		
Social security tax, etc	$598. 97	
Unemployment insurance	218. 42	
Licenses, local and pick-up and delivery units	298. 00	
Gasoline tax, State and Federal	3, 202. 00	
Licenses, ton-mile taxes	12, 074. 93	
	16, 302. 32	9. 04
Insurance:		
Compensation insurance	1, 872. 58	
P. D., P. L., comp., fire and cargo	4, 263. 68	
	6, 136. 26	3 40
Wage and salaries:		
Wages, office help, etc	7, 192. 52	
Wages, dock help	4, 859. 81	
Wages, helpers, etc	12, 500. 00	
Wages, chauffeurs and helpers	30, 668. 75	
Salaries, officers	8, 948. 22	
Sales; wages—Chicago	2, 500. 00	
Sales, wages—Milwaukee	4, 283. 65	
	70, 952. 95	39. 38

	Cost per truck-mile	Cost per trip	Cost per cwt. tonnage
Taxes	$0. 0193	$2. 2877	$0. 0238
Insurance	. 0072	. 8611	. 0089
Wages and salaries	. 0840	9. 9569	. 1038

488 Tonnage Record—Between Chicago and Milwaukee

LOCAL

Year	North-bound			South-bound		
	Weight	Revenue	Average rate	Weight	Revenue	Average rate
1935	8,738,208	$26,542.42	30.4	5,337,969	$17,860.06	[1] 30.4
1936	11,300,258	35,034.59	31	7,518,848	23,255.90	[2] 31.0
1937	15,344,947	46,751.83	30.4	10,543,167	30,558.61	[3] 30.4
Total	35,383,413	108,328.84	30.6	23,399,984	71,674.57	30.6

CONNECTING LINES

1935	6,394,903	$15,678.43	24.5	2,988,312	$7,924.48	26.4
1936	4,387,651	10,598.98	24.8	8,521,218	18,888.75	22.1
1937	15,883,667	33,269.38	21	10,735,440	23,185.89	21.6
Total	26,666,221	59,546.79	22.3	22,244,970	49,999.12	22.4

STEEL

1935	5,833,274	$13,935.27	23.9			
1936	14,250,447	25,920.21	18.2			
1937	15,840,894	33,474.95	21.1			
Total	35,924,615	73,330.43	20.4			

SUMMARY

Local	3,538,343	$108,328.64	30.6	23,399,984	$71,674.57	30.6
Connecting	26,666,221	59,546.79	22.3	22,244,970	49,999.12	22.5
Steel	35,924,615	73,330.43	20.4			
Total	97,974,249	241,206.06	24.5	45,644,954	121,673.69	26.6

[1] 70% L. T. L., 30% T. L. [2] 60% L. T. L., 40% T. L. [3] 50% L. T. L., 50% T. L.

489 TONNAGE RECORD—BETWEEN MILWAUKEE AND CHICAGO

Year	Total north-bound	Percent tonnage ratio	Total south-bound	Percent tonnage ratio	Total tonnage
1935 (L)	8,738,208	61	5,337,969	39	14,076,177
(C)	6,394,903	67	2,988,312	33	9,383,215
(S)	5,833,274	100			5,833,274
Total	20,966,385	71	8,326,281	29	29,292,666
1936 (L)	11,300,258	60	7,518,848	40	18,819,106
(C)	4,387,651	34	8,521,218	66	12,908,869
(S)	14,250,447	100			14,250,447
Total	29,938,356	65	16,040,066	35	45,978,422
1937 (L)	15,344,947	60	10,543,167	40	25,888,114
(C)	15,883,667	69	10,735,440	31	26,619,107
(S)	15,840,894	100			15,840,894
Total	47,069,508	68	21,278,607	32	68,348,115

SUMMARY

1935	20,966,385	71	8,326,281	29	29,292,666
1936	29,938,356	65	16,040,066	35	45,978,422
1937	47,069,508	68	21,278,607	32	68,348,115
Total	97,974,249	68	45,644,954	32	143,619,203

490 Comparison of Proposed Rates With Cost of Operation Between Milwaukee, White Fish Bay, West Milwaukee, West Allis, Wauwatosa, South Milwaukee; Shorewood, Cudahy, St. Francis, Wisconsin, and Chicago, Illinois (distance 92 miles)

Proposed rate (W. L. Meyers' MF-I. C. C. B-138):
(1) 30 cents.
(2) 25 cents—Minimum 10,000 pounds.
(3) 20 cents—Minimum 20,000 pounds.

Cost:

Chicago	$0.0125
Milwaukee	.0131
Highway	.1734
	$0.1990

491 M. J. Seiwert Forwarding Co., Sheboygan, Wisconsin

Statement

This exhibit shows the following information, with respect to the costs of operation of this company for the year 1937:

1. The first page shows a recapitulation of the total operating expenses broken down into five operations, namely:
(1) Chicago Dock and Terminal;
(2) Milwaukee Dock and Terminal;
(3) Sheboygan Dock and Terminal;
(4) Highway, Terminal to Terminal;
(5) Administrative and Overhead.
This page also shows a summary of the allocations of the total operating costs to these various divisions of operation.

2. The following pages appearing in the following order show itemized details of operative expenses for each of the five operations so designated:
(1) Chicago Dock and Terminal
(2) Milwaukee Dock and Terminal
(3) Sheboygan Dock and Terminal
(4) Highway
(5) Administrative

3. The following three pages pertain to cost analysis to the following:
(1) Chicago Dock and Terminal
(2) Milwaukee Dock and Terminal
(3) Sheboygan Dock and Terminal.
These cost analyses are broken down to show separate costs for each of the following classes of service:
(1) Pick-Up and delivery by highway units.
(2) Pick-Up and delivery by paid out cartage.
(3) Delivery to dock by others.

It will be observed that the costs shown for each respective station group of services includes the charges directly attributable to the specific service plus the percentage of Administration and Overhead based on the ratios shown in sheet shown in this
492 exhibit under heading "Tonnage Summary and Tonnage Ratios". These pages also show the break down for costs per hundred pounds handled.

4. The following page shows cost analysis for Highway, Terminal to Terminal operations including all costs chargeable to this class of operation, showing cost per hundred pounds handled, and cost per truck mile.

5. The following page shows Tonnage Summary, showing direction of movement in volume and per cent ratios, also tonnage volumes and per cent ratios according to the three types of pick-up and delivery service mentioned previously herein.

6. The following page shows the proportion of Taxes, Insurance and Wages and Salaries, to the total operating costs of this carier, with these figures broken down into cost per hundred pounds handled.

7. The following page shows the routes traveled by this carrier as authorized in the certificate issued by the Interstate Commerce Commission.

8. The following page shows a comparison of the costs of operation in the various services necessary in connection with the handling of traffic under the proposed rate. It will be observed that the proposed rate will produce revenue much in excess of the costs.

493 Summary of Operating Expenses, 1937

RECAPITULATION

Chicago dock and terminal	$36,178.56	
Milwaukee dock and terminal	15,990.60	
Sheboygan dock and terminal	16,965.17	
Highway, terminal to terminal	66,254.71	
Administrative and overhead	24,364.71	
Total Operating Expenses		$159,753.75

SUMMARY OF COST ANALYSES, THIS EXHIBIT

Chicago dock and terminal:		
(1) Local pick-up and delivery by highway units	8,391.64	
(2) Local pick-up and delivery by paid out cartage	30,510.16	
(3) Local pick-up and delivery to dock, by others	3,782.14	
		42,683.94

Milwaukee dock and terminal:		
(1) Local pick-up and delivery by highway units	$347.48	
(2) Local pick-up and delivery by paid out cartage	18,542.52	
		$18,890.00
Sheboygan dock and terminal:		
(1) Local pick-up and delivery by highway units	8,709.40	
(2) Local pick-up and delivery by paid out cartage	11,301.36	
		20,010.76
Highway—Terminal to Terminal		78,169.05
Grand total		158,753.75

494 **Details of Operating Expenses, 1937**

CHICAGO DOCK AND TERMINAL

Water	132.83	
Cartage paid out	19,045.50	
Union dues	5.00	
Rent and lease expense	1,340.00	
Heat, light and fuel	207.85	
Unemployment compensation	375.25	
Maintenance of leased improvements	7.73	
Employers tax on O. A. B	213.55	
Depreciation on Warehouse and office	452.12	
Wages, warehousemen	7,639.76	
Wages, clerical employees	4,958.80	
Wages, officers	1,500.00	
Wages, watchman	271.50	
Wages, mechanic	15.50	
Bad debts	13.17	
		36,178.56

495 MILWAUKEE DOCK AND TERMINAL

Water	7.80	
Cartage paid out	13,460.58	
Rent and lease expense	452.61	
Heat, light and fuel	200.00	
Employers tax on O. A. B	65.61	
Rent of P. O. box	8.00	
Wages, clerical employees	1,800.00	
		15,990.60

496 SHEBOYGAN DOCK AND TERMINAL

Cartage paid out	6,120.17	
Terminal expense	2,407.20	
Employers tax on O. A. B	219.00	
Wages, warehousemen	4,682.64	
Wages, clerical employees	3,536.07	
		$16,965.17

497 HIGHWAY

Gas, oil and grease	$9,653.94	
Gasoline tax	2,583.91	
Tires, tubes and repairs	3,986.04	
Repairs, trailers, trucks, etc.	4,689.44	
Garage rents (trucks)	290.45	
Insurance expense	6,557.42	
Room rent, Chicago	27.00	
Depreciation, equipment	5,276.28	
Licenses, etc.	1,105.00	
Permits	555.00	
Ton-mile tax, Wisconsin	3,005.97	
Ton-mile tax, Illinois	1,256.30	
Fines (highway violations)	274.72	
Wages, chauffeurs	15,073.71	
Leased trucks (freight exp.)	11,919.53	
		$66,254.71

498 ADMINISTRATIVE AND OVERHEAD

Claims paid	$198.54	
Tariff costs	632.17	
Solicitation expense	1,335.23	
Commission expense	120.00	
Dues, fees and subscriptions	987.75	
Postage	779.43	
Advertising	1,332.06	
Car rental	120.00	
Depreciation, furn. and fixtures	255.96	
Legal and professional fees	669.25	
Printing and stationery	173.44	
Office supplies	1,767.87	
Telephone and telegraph	2,149.07	
Travelling expenses	614.18	
Claims paid, L & D	2,218.96	
Interest expense	451.30	
Bank service charge	384.21	
Repairs to office mach.	109.74	
Wages, solicitors, Wisconsin	3,750.08	
Wages, solicitors, Illinois	1,560.00	
Salaries, officers	4,055.00	
C. O. D. expense	2.12	
Cash, over and short a/c	2.12	
Employees payments on uniforms	13.50	
Bond premiums	94.02	
Misc. supplies (minor items)	258.59	
Misc. expense (minor items)	286.86	
Drivers expenses	33.26	
		$24,364.71

499 Cost Analysis

CHICAGO DOCK AND TERMINAL

Items of cost	Local pick-up and delivery by highway units	Local pick-up and delivery by paid out cartage	Local pick-up and delivery to dock by others
Water	$47.16	$64.42	$21.25
Cartage paid out		19,045.50	
Union dues	1.78	2.42	.80
Rent and lease expense	475.70	649.90	214.40
Heat, light, and fuel	73.79	100.81	33.25
Unemployment compensation	133.21	182.00	60.04
Maintenance of leased impvts	2.74	3.75	1.24
Bad debts	4.68	6.39	2.10
Employers tax on O. A. B	75.81	103.57	34.17
Depreciation, whse. & office, Chicago	160.50	219.28	72.34
Wages, warehousemen	2,712.12	3,705.28	1,222.36
Wages, clerical employees	1,760.37	2,405.02	793.41
Wages, officers	532.50	727.50	240.00
Wages, watchmen	96.38	131.68	43.44
Wages, mechanics	5.50	7.52	2.48
Administration	2,309.40	3,155.12	1,040.86
Total costs	8,391.64	30,510.16	3,782.14
Total tonnage (lbs.)	15,658,776	21,394,454	7,028,171
Cost per 100# tonnage	$0.014	$0.142	$0.053

500 MILWAUKEE DOCK AND TERMINAL

Items of cost	Local Pick-up and delivery by highway units	Local Pick-up and delivery by paid-out cartage
Water	$0.50	$7.30
Cartage paid out		13,460.58
Rent and lease expense	28.97	423.64
Heat, light, and fuel	12.80	187.20
Employers tax on O. A. B	3.94	57.67
Rent of P. O. box	.51	7.49
Wages, clerical employees	115.20	1,684.89
Administration	185.56	2,713.84
Total costs	347.48	18,542.52
Total tonnage (lbs.)	1,539,710	22,299,780
Cost per 100# tonnage	$0.022	$0.083

501 SHEBOYGAN DOCK AND TERMINAL

Items of cost	Local pick-up and delivery by highway units	Local pick-up and delivery by paid-out cartage
Cartage paid out		$6,120.17
Terminal expense	$1,509.31	897.89
Employers tax on O. A. B	137.37	81.72
Wages, warehousemen	2,936.02	1,746.62
Wages, clerical employees	2,217.12	1,318.95
Administration expenses	1,909.58	1,136.01
Total costs	8,709.40	11,301.36
Total tonnage (lbs.)	12,710,031	7,531,900
Cost per 100# tonnage	$0.068	$0.15

502 HIGHWAY—TERMINAL TO TERMINAL

Items of cost:	Amount
Gas, oil and grease	$9,653.94
Gasoline tax	2,583.91
Tires, tubes and repairs	3,386.04
Repairs, trailers and trucks	4,689.44
Garage rents, trucks	290.45
Insurance expense	6,557.42
Room rent, Chicago	27.00
Depreciation equipment	5,276.28
License expense	1,105.00
Permits	555.00
Ton mile tax, Wisconsin	3,005.97
Fines	274.72
Ton mile tax, Illinois	1,256.30
Wages, chauffeurs	15,073.71
Leased trucks, rental	11,919.53
Administration expenses	11,914.34
Total costs	78,169.05
Total tonnage	44,081,401
Cost per 100# tonnage	$0.177
Total truck-miles	491,629
Cost per truck-mile	$0.159

503 TONNAGE SUMMARY: 1937

	Chicago	Percent	Milwaukee	Percent	Sheboygan	Percent
North-bound	28,112,687	63.8	18,343,970	76.9	9,768,717	48.2
South-bound	15,968,714	36.2	5,495,500	23.1	10,473,214	51.8
Total (lbs.)	44,081,401	100	23,839,470	100	20,241,931	100

TONNAGE RATIOS

	Chicago	Percent	Milwaukee	Percent	Sheboygan	Percent
Local pick-up and delivery by highway units	15,859,776	35.8	1,539,710	6.4	12,710,031	62.7
Local pick-up and delivery by paid out cartage	21,304,454	48.5	22,299,760	93.6	7,531,900	37.3
Local pick-up and delivery by dock, by others	7,028,171	16.0				
Total	44,081,401	100	23,839,470	100	20,241,931	100

504 STATEMENT SHOWING RATIOS OF TAXES, INSURANCE, AND WAGES AND SALARIES, TO THE TOTAL OPERATING EXPENSES, AND COST THEREOF PER 100# TONNAGE

Items	Amount	Percent
Taxes:		
Gasoline tax	$2,583.91	
Licenses, etc	1,105.09	
Permits	555.00	
Ton-mile tax, Wisconsin	3,005.97	
Employers tax on O. A. B	494.25	
Ton-mile tax, Illinois	1,256.30	
Total taxes	9,000.43	5.6
Insurance:		
Insurance expense (no details)	6,557.42	
Unemployment compensation	375.25	
Total insurance	6,932.67	4.3
Salaries and wages:		
Wages, warehousemen (Wisc.)	4,682.64	
Wages, chauffeurs	15,073.71	
Wages, solicitors (Wisc.)	3,750.08	
Wages, clerical employees (Wisc.)	5,336.07	
Wages, officers (Wisc.)	4,055.00	
Wages, warehousemen (Ill.)	7,639.76	
Wages, solicitors (Ill.)	1,560.00	
Wages, clerical employees (Ill.)	4,958.00	
Wages and salaries, officers (Ill.)	1,500.00	
Wages, watchmen	271.50	
Wages, mechanic	15.50	
Total salaries & wages	49,842.26	30.5

SUMMARY	Cost per 100# tonnage
Taxes	$0.002
Insurance	.0015
Wages	.11

505 Routes

The following routes are those which this carrier hold certificates from I. C. C. to operate motor vehicles.

Commodities generally, except those of unusual value, and except high explosives, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between Chicago, Ill., and Two Rivers, Wis., as follows:

From Chicago over U. S. Highway 12 to Des Plaines, Ill., thence over U. S. Highway 45 to Hales Corners, Wis., thence in a northeasterly direction over unnumbered highway to Milwaukee, Wis., thence over Wisconsin Highway 57 to Waldo, Wis., thence over Wisconsin Highway 28 to Sheboygan, Wis., thence over U. S. Highway 141 to Manitowoc, Wis., and thence over Wisconsin Highway 42 to Two Rivers; also

From Chicago over U. S. Highway 41 to Wilson, Ill., thence over Illinois Highway 20 to Waukegan, Ill., thence over Illinois and Wisconsin Highways 42 to Carrollville, Wis., thence over Wisconsin Highway 100 to junction Wisconsin Highway 38, thence over Wisconsin Highway 38 to Milwaukee, and thence to Two Rivers as specified above; and

Return over these routes to Chicago.

All intermediate points.

Off-route points within the territory bounded by a line beginning at Waukegan, Ill., and extending along Illinois Highway 20 to junction Illinois Highway 172, thence along Illinois Highway 172 to Libertyville, Ill., thence along Illinois Highway 176 to Mundelein, Ill., thence along Illinois Highway 54 to junction Illinois Highway 22, thence along Illinois Highway 22 to junction Illinois Highway 63, thence along Illinois Highway 63 to junction U. S. Highway 330, thence along U. S. Highway 330 to Geneva, Ill., thence along U. S. Highway 30 to the eastern boundary of Lake County, Ind., and thence along the Lake County boundary line and the western shore of Lake Michigan to the point of beginning.

506 COMPARISON OF COST WITH PROPOSED RATE

Towns served	Proposed rate	Cost of operation (per 100#)		
		(1)	(2)	(3)
Kohler, Wisconsin	40	$0.259	$0.341	
Milwaukee, Wisconsin	30	.259		$0.274
Sheboygan, Wisconsin	40	.259	.341	
Two Rivers, Wisconsin	40	.259	.341	

(1) Where pickup and delivery is made by Highway units.

Chicago	$0.014
Other Terminals	.068
Highway	.177
Total	.259

(2) Where pickup or delivery is made at Chicago by Highway units and delivery by local cartage at other stations.

Chicago	$0.014
Highway	.177
Other stations (except Milwaukee)	.15
Total	.341

(3) Where pickup or delivery is made at Chicago with Highway units and delivery by local cartage at Milwaukee.

Chicago	$0.014
Highway	.177
Milwaukee	.083
Total	.274

507 *Exhibit No. 9*

Witness: Gerard.

Before the Interstate Commerce Commission

I. & S. Docket M-247

PROPORTIONAL CONCENTRATION AND DISTRIBUTION RATES

ANALYSIS PER CWT. OF THROUGH CHARGES ON TRAFFIC INVOLVED[1]

	Combined traffic 3 territories	Wisconsin tariff territory	Chicago Metropolitan tariff territory	Indiana tariff territory
Average through rate	$1.5537	$1.6074	$1.5550	$1.3970
Average paid other transport companies	1.0337	1.0359	1.0342	1.0299
Average paid respondents	.2439	.3205	.2265	.2035
Forwarder's operating cost	.2657	.2816	.2397	.2496
Total transportation cost	1.5433	1.6380	1.5004	1.4830
Forwarder's profit or loss	.0104	(0306)	.0546	(0860)

[1] Based on test February 11, 1938, of all shipments arriving or forwarded that day.

508 *Exhibit No. 10*

Witness: H. F. C. Brown

Statement of L. C. L. Freight Shipments Made Via Carloading Companies by Western Printing & Lithographing Company and Subsidiary Companies, Racine, Wisconsin.

Year, 1937—6,102,800 lbs.

* * * * *

Month of September 1937; 2,347 shipments; 697,551 lbs.

Average, 90 shipments per day (26 shipping days), to the following—

States:	Destinations in each State
1. Alabama	5
2. Arizona	7
3. Arkansas	13
4. California	69
5. Colorado	14
6. Georgia	4
7. Idaho	14
8. Illinois	11
9. Indiana	10
10. Iowa	9
11. Kansas	22
12. Kentucky	7
13. Louisiana	6
14. Maryland	1
15. Michigan	17
16. Minnesota	4
17. Mississippi	2
18. Missouri	21
19. Montana	9
20. Nebraska	16
21. Nevada	2
22. New Jersey	1
23. New Mexico	4
24. New York	8
25. North Carolina	1
26. North Dakota	4
27. Ohio	27
28. Oklahoma	20
29. Oregon	15
30. Pennsylvania	17
31. South Dakota	2
32. Tennessee	4
33. Texas	40
34. Utah	11
35. Washington	13
36. West Virginia	6
37. Wyoming	2
British Columbia	2

Total number destinations in 37 States and British Columbia, Sept. 1937 440

509 *Exhibit No. 11*

Witness: Johnson

Before the Interstate Commerce Commission

Docket No. I. & S. M-247

Exhibit showing History of Rates between Racine, Wisconsin and Chicago, Illinois in connection with traffic moving via Carloading or Forwarding companies.

Rate effective 1930 to April 1, 1936	30¢ per cwt.
Rate Effective April 1, 1936: Service Transport Company MF-I. C. C. 1. Schedule of Minimum Rates and Charges, cancelled by MF-I. C. C. No. 2, effective April 1, 1936	30¢ per cwt.
Rate Effective April 1, 1936: Service Transport Company MF-I. C. C. No. 2, Schedule of Minimum Rates and Charges	20¢ per cwt.
Note.—20¢ rate filed as minimum rate only, rate used was 30¢ per cwt	(See Note)
Effective February 1, 1937:	
Articles taking rates of column 57 or higher	30¢ per cwt.
Articles taking rates lower than colmn 57	20¢ per cwt.
10,000# shipments	25¢ per cwt.
15,000# shipments	20¢ per cwt.
20,000# shipments	15¢ per cwt.

Memorandum of Oral Contracts, Service Transport Company, MF-I. C. C. Nos. 3-4-5-6-7-8-9-11-12-13-14-15-16-17-18, cancelled May 26, 1937, MF-I. C. C. No. 10, cancelled July 26, 1937.

Effective May 26, 1937:	
Rate	30¢ per cwt.
Automobile Jacks Mtd or Not Mtd	20¢ per cwt.
10,000# Shipments	25¢ per cwt.
15,000# Shipments	20¢ per cwt.
20,000# Shipments	15¢ per cwt.

Memorandum of Oral Contracts, Service Transport Company MF-I. C. C. Nos. 20-22-24-29-32-33, cancelled July 26, 1937.

MF-I. C. C. Nos. 19-21-23-25-26-27-28-30-31-34, rejected by the Interstate Commerce Commission account carrier participating in Carloading and Forwarding Company tariffs by concurrence.

510 *Exhibit No. 12*

Witness: Johnson

Before the Interstate Commerce Commission

Docket No. —

Exhibit showing number of shipments, weight in pounds, charges, and average revenue in cents on shipments originating at or destined to Racine, Wisconsin, for three-week period covering weeks of January 4, 1937, July 19, 1937 and November 15, 1937. Shipments, weights, charges and average revenue subdivided between Chicago local traffic, truck interline traffic and carloading company traffic, including all shipments and excluding minimum shipments.

511. Average revenue in cents per 100 pounds for weeks of January 4, 1937, July 19, 1937, and November 15, 1937, also average revenue for three-week period.

EXCLUDING MINIMUM SHIPMENTS

Week	Type of traffic	Ship'ts.	Weight in pounds	Charges	Average revenue in cents
1-4-37	Chicago local	198	387,335	$801.73	20.70
7-19-37	do	187	390,431	863.70	22.12
11-15-37	do	205	463,597	1,110.80	23.96
	Total	590	1,241,363	$2,776.23	
Average revenue for 3-week period.					22.36
1-4-37	Truck interline	77	93,719	$187.13	19.97
7-19-37	do	145	139,097	317.83	22.85
11-15-37	do	144	168,433	390.01	23.16
	Total	366	401,249	$894.97	
Average revenue for 3-week period.					22.30
1-4-37	Carloading	440	228,361	$682.51	29.89
7-19-37	do	420	297,669	877.37	29.47
11-15-37	do	428	242,757	691.12	28.47
	Total	1,288	768,787	$2,251.00	
Average revenue for 3-week period.					29.28

INCLUDING MINIMUM SHIPMENTS

1-4-37	Chicago local	377	410,061	$935.98	22.83
7-19-37	do	397	415,841	1,017.20	24.46
11-15-37	do	389	484,364	1,248.35	25.77
	Total	1,163	1,310,266	$3,201.53	
Average revenue for 3-week period.					24.43
1-4-37	Truck interline	109	96,231	$198.74	20.65
7-19-37	do	211	144,370	337.88	23.40
11-15-37	do	228	175,942	421.38	23.95
	Total	548	416,543	$958.00	
Average revenue for 3-week period.					23.00
1-4-37	Carloading	666	242,985	$759.46	31.26
7-19-37	do	745	321,200	996.29	31.01
11-15-37	do	776	265,501	818.27	30.82
	Total	2,187	829,686	$2,574.02	
Average revenue for 3-week period.					31.20

512 Daily Average Revenue on Chicago Local Traffic covering weeks of January 4, 1937, July 19, 1937, and November 15, 1937.

EXCLUDING MINIMUM SHIPMENTS

Date	Shipments	Weight in pounds	Charges	Average revenue in cents
1-4-37	35	85,585	$171.60	20.01
1-5-37	37	71,902	156.52	21.77
1-6-37	38	71,255	150.53	21.12
1-7-37	46	92,667	182.30	19.67
1-8-37	25	29,272	67.16	22.94
1-9-37	17	36,654	73.62	20.09
Total	198	387,335	801.73	
7-19-37	31	71,426	$153.46	21.49
7-20-37	32	66,055	157.78	23.89
7-21-37	45	89,332	202.19	22.63
7-22-37	30	93,960	179.49	19.10
7-23-37	25	42,355	103.03	24.33
7-24-37	20	27,303	67.75	24.81
Total	187	390,431	863.70	
11-15-37	42	87,623	$240.58	27.45
11-16-37	40	79,490	191.20	24.05
11-17-37	36	88,031	217.40	24.69
11-18-37	27	74,376	153.09	20.58
11-19-37	42	85,377	203.22	23.81
11-20-37	18	48,700	105.31	21.62
Total	205	493,597	1,110.80	

INCLUDING MINIMUM SHIPMENTS

1-4-37	62	89,006	$191.85	21.55
1-5-37	70	75,794	181.27	23.91
1-6-37	70	76,441	174.53	22.83
1-7-37	84	97,866	210.80	21.54
1-8-37	62	32,879	94.91	28.87
1-9-37	29	38,465	82.62	21.70
Total	377	410,061	935.98	
7-19-37	67	75,337	$176.71	23.46
7-20-37	73	70,653	188.53	26.68
7-21-37	90	95,261	235.94	24.77
7-22-37	65	98,465	205.49	20.87
7-23-37	66	47,285	130.28	27.66
7-24-37	36	28,840	79.75	27.65
Total	397	415,841	1,017.20	
11-15-37	79	91,433	$267.88	29.30
11-16-37	71	83,634	214.45	25.64
11-17-37	80	93,222	250.40	26.86
11-18-37	59	77,949	177.09	22.72
11-19-37	69	88,082	223.47	25.37
11-20-37	31	50,044	115.06	22.99
Total	389	484,364	1,248.35	

513 **Daily Average Revenue on Truck Interline Traffic covering weeks of January 4, 1937, July 19, 1937, and November 15, 1937.**

EXCLUDING MINIMUM SHIPMENTS

Date	Shipments	Weight in Pounds	Charges	Average revenue in cents
1-4-37	16	19,123	$35.58	18.61
1-5-37	9	25,742	46.19	17.17
1-6-37	18	23,472	52.84	22.51
1-7-37	20	16,771	31.60	18.78
1-8-37	12	6,785	17.48	25.62
1-9-37	2	1,826	3.54	19.39
Total	77	93,719	187.13	
7-19-37	23	22,278	51.54	23.13
7-20-37	32	33,238	79.04	23.78
7-21-37	28	24,881	57.32	23.03
7-22-37	30	17,522	41.60	23.74
7-23-37	28	37,579	80.35	21.38
7-24-37	4	3,569	7.98	22.17
Total	145	139,067	317.83	
11-15-37	27	24,921	60.40	24.23
11-16-37	28	33,758	84.99	25.18
11-17-37	31	17,804	42.85	24.07
11-18-37	31	33,403	78.34	23.45
11-19-37	19	24,605	58.77	23.89
11-20-37	8	33,942	64.65	19.05
Total	144	168,433	390.01	

INCLUDING MINIMUM SHIPMENTS

1-4-37	18	19,325	$36.30	18.78
1-5-37	14	26,281	47.99	18.28
1-6-37	24	24,054	55.04	22.88
1-7-37	26	17,197	33.50	19.48
1-8-37	21	7,339	20.80	28.34
1-9-37	6	2,035	5.11	25.11
Total	109	96,241	198.74	
7-19-37	45	23,360	55.74	23.86
7-20-37	38	33,527	81.29	24.25
7-21-37	38	25,940	60.82	23.44
7-22-37	40	18,478	45.25	24.49
7-23-37	41	38,762	84.90	21.90
7-24-37	9	4,303	9.88	22.96
Total	211	144,370	337.88	
11-15-37	36	25,922	63.70	24.57
11-16-37	53	35,865	94.66	26.39
11-17-37	48	19,407	48.96	25.23
11-18-37	41	34,325	81.99	23.89
11-19-37	41	26,370	67.07	25.43
11-20-37	9	34,053	65.00	19.09
Total	228	175,942	421.38	

514 Daily Average Revenue on Carloading Company Traffic, covering weeks of January 4, 1937, July 19, 1937, and November 15, 1937.

EXCLUDING MINIMUM SHIPMENTS

Date	Shipments	Weight in pounds	Charges	Average revenue in cents
1-4-37	101	56,002	$167.74	29.93
1-5-37	73	36,085	107.77	29.86
1-6-37	94	52,442	156.87	29.91
1-7-37	71	34,978	104.84	29.98
1-8-37	76	33,671	99.92	29.68
1-9-37	25	15,203	45.37	29.84
Total	440	228,361	682.51	
7-19-37	57	69,343	202.85	29.25
7-20-37	80	42,730	128.20	30.00
7-21-37	89	81,988	239.70	29.24
7-22-37	72	39,117	115.13	29.43
7-23-37	108	58,930	174.79	29.66
7-24-37	14	5,561	16.70	30.03
Total	420	297,669	877.37	
11-15-37	83	57,423	159.63	27.80
11-16-37	94	50,075	134.80	26.92
11-17-37	64	31,584	94.01	29.77
11-18-37	84	46,593	139.25	29.88
11-19-37	76	44,385	125.30	28.23
11-20-37	27	12,697	38.13	30.03
Total	428	242,757	691.12	

INCLUDING MINIMUM SHIPMENTS

1-4-37	151	59,034	$184.74	31.30
1-5-37	105	37,922	118.37	31.21
1-6-37	135	55,600	170.37	30.64
1-7-37	109	37,199	117.84	31.68
1-8-37	118	36,351	114.12	31.39
1-9-37	48	16,879	54.02	32.00
Total	666	242,985	759.46	
7-19-37	118	73,266	226.42	30.90
7-20-37	135	46,332	147.75	31.89
7-21-37	148	86,861	258.85	29.93
7-22-37	129	43,427	134.68	31.01
7-23-37	172	63,936	199.19	31.15
7-24-37	43	7,378	29.40	39.85
Total	745	321,200	996.29	
11-15-37	166	62,408	190.63	30.55
11-16-37	162	54,460	159.86	29.36
11-17-37	118	35,368	112.96	31.94
11-18-37	126	49,368	153.85	31.16
11-19-37	140	49,065	147.95	30.15
11-20-37	64	14,832	53.08	35.79
Total	776	265,501	818.27	

515

Exhibit No. 13

Witness: Johnson

Before the Interstate Commerce Commission Docket No. —

Exhibit showing comparison of carloading and truck line rates and comparison of interline truck divisions with proportional rate applicable to and from Racine, Wis.

516 RACINE INTERLINE TRUCK DIVISION COMPARED WITH RACINE PROPORTIONAL RATE

[Rates in cents]

	Classes				
	1	2	3 R25	R26	4
Quincy, Ill.:					
Carloading rate	89	76			
Proportional rate	30	30			
Truck rate	89	76	62	49	45
Truck division 36%	32.04	27.36	22.32	17.64	16.20
Springfield, Ill.:					
Carloading rate	82				
Proportional rate	30				
Truck rate	82	70	57	45	41
Truck division 40%	32.8	28.0	22.8	18.0	16.4
Peoria, Ill.:					
Carloading rate	73				
Proportional rate	30				
Truck rate	73	62	51	40	37
Truck division 42%	30.66	26.04	21.42	16.8	15.35
Evansville, Ind.:					
Carloading rate	94	80			
Proportional rate	30	30			
Truck rate	94	80	66	52	47
Truck division 34%	31.96	27.2	21.64	17.68	15.98
New Albany, Ind.:					
Carloading rate	94				
Proportional rate	30				
Truck rate	94	80	66	52	47
Truck division 34%	31.96	27.2	21.64	17.68	15.98
South Bend, Ind.:					
Carloading rate	66				
Proportional rate	30				
Truck rate	66	56	46	36	33
Truck division 47%	31.02	26.32	21.62	16.92	15.51
Fort Wayne, Ind.:					
Carloading rate	75				
Proportional rate	30				
Truck rate	75	64	53	41	38
Truck division 42%	31.5	26.88	22.26	17.22	15.96
Grand Rapids, Mich.:					
Carloading rate	66				
Proportional rate	30				
Truck rate	66	56	46	36	33
Truck division 40%	26.4	22.4	18.4	14.4	13.2
Detroit, Mich.:					
Carloading rate {To	87	74			
Carloading rate {Fr	87	74	61		
Proportional rate	30	30	30		
Truck rate	87	74	61	48	44
Truck division 36%	31.32	26.64	21.96	17.28	15.84
St. Louis, Mo.:					
Carloading rate	92	78			
Proportional rate	30	30			
Truck rate	92	78	64	51	46
Truck division 36%	33.12	28.04	23.04	18.36	16.56

RACINE INTERLINE TRUCK DVISION COMPARED WITH RACINE PROPORTIONAL RATE—Continued

[Rates in cents]

	Classes				
	1	2	3 R25	R26	4
Buffalo, N. Y.					
Carloading rate {To	110	94			85
Carloading rate {Fr	110	94	77		
Proportional rate	30	30	30		
Truck rate	110	94	77	61	55
Truck division 30%	38.0	28.2	23.1	18.3	16.5
317 Columbus, Ohio:					
Carloading rate	94	80			
Proportional rate	30	30			
Truck rate	94	80	66	52	47
Truck division 30%	32.9	28.0	23.1	18.2	16.45
Cincinnati, Ohio:					
Carloading rate	94	80			
Proportional rate	30	30			
Truck rate	94	80	66	52	47
Truck division 35%	32.9	28.0	23.1	18.2	16.45
Dayton, Ohio					
Carloading rate	89	76			
Proportional rate	30	30			
Truck rate	89	76	62	49	45
Truck division 37%	32.93	28.12	22.94	18.13	16.65
Cleveland, Ohio:					
Carloading rate	99	84			
Proportional rate	30	30			
Truck rate	99	84	69	54	50
Truck division 34%	23.66	28.56	23.47	18.36	17.00
Toledo, Ohio					
Carloading rate	87	74			
Proportional rate	30	30			
Truck rate	87	74	61	48	44
Truck division 38%	33.05	28.12	23.18	18.24	16.72
Pittsburgh, Pa:					
Carloading rate {To	110	96	79		
Carloading rate {Fr	113	96			
Proportional rate	30	30	30		
Truck rate	113	96	79	62	57
Truck division 31%	35.03	29.76	24.49	19.22	17.67
Hartford, Conn					
Carloading rate	132				
Proportional rate	30				
Truck rate	132	120	106	84	76
Truck division 30%	30.4	25.8	21.2	16.8	15.2
Boston, Mass:					
Carloading rate	134	131	108		
Proportional rate	30	30	30		
Truck rate	134	131	108	85	77
Truck division 26%	30.8	26.2	21.6	17.0	15.4
Newark, N. J.					
Carloading rate	132	120	106		
Proportional rate	30	30	30		
Truck rate	132	120	106	84	76
Truck division 30%	30.4	25.8	21.2	16.8	15.2
Albany, N. Y.					
Carloading rate	139	118			
Proportional rate	30	30			
Truck rate	139	118	97	76	70
Truck division 20%	27.8	23.6	19.4	15.2	14.0
818 New York, N. Y.					
Carloading rate	132	120	106		
Proportional rate	30	30	30		
Truck rate	132	120	106	84	76
Truck division 20%	30.4	25.8	21.2	16.8	15.2
Syracuse, N. Y.					
Carloading rate	125				
Proportional rate	30				
Truck rate	125	105	88	69	63
Truck division 20%	25.0	21.2	17.6	13.8	12.6
Philadelphia, Pa.					
Carloading rate	131	128	106		
Proportional rate	30	30	30		
Truck rate	131	128	106	83	76
Truck division 20%	30.3	25.6	21.2	16.8	15.2

TARIFF AUTHORITY

Universal Carloading & Distributing Company ..... MF-I. C. C. 108.
National Carloading Corporation ..... MF-I. C. C. 68.
Central States Motor Freight Bureau, Inc., W. L. Meyers, Agt ..... MF-I. C. C. B138.
Eastern Central Motor Carriers Ass'n, J. H. Noble, Agt ..... MF-I. C. C. 1.
Central Motor Freight Association, Inc., Harry M. Slater, Agt ..... MF-I. C. C. 4.
Central Motor Freight Association, Inc., Harry M. Slater, Agt ..... MF-I. C. C. 6.

519 *Exhibit No. 14*

Witness: Johnson.

Before the Interstate Commerce Commission

Docket No. —

Exhibit showing class rates applicable between Chicago, Illinois, and Racine, Milwaukee, Kenosha, Sheboygan, and Green Bay, Wisconsin. List of less truck load commodity rates applicable between Chicago, Illinois and Kenosha, Racine, Milwaukee, Sheboygan and Green Bay, Wisconsin. List of commodity rates with minimum weights of 5,000 and 10,000 pounds applicable between Chicago, Illinois and Kenosha, Racine, Milwaukee, Sheboygan, and Green Bay, Wisconsin.

520 CLASS RATES

[Rates in cents]

Between Chicago, Illinois, and—	Classes (F)—				
	1 100	2 85	3-R25 70	R26 55	4 50
Kenosha, Wisconsin	45	38	32	25	23
Racine, Wisconsin	48	41	34	26	24
Milwaukee, Wisconsin	53	45	37	29	27
Sheboygan, Wisconsin	68	58	48	37	34
Green Bay, Wisconsin	79	67	55	43	40

LESS TRUCKLOAD COMMODITY RATES APPLICABLE BETWEEN CHICAGO, ILLINOIS AND KENOSHA, RACINE, MILWAUKEE, SHEBOYGAN AND GREEN BAY, WISCONSIN

[Explanation of Column Heading: K indicates Kenosha, R indicates Racine, M indicates Milwaukee, S indicates Sheboygan, and G indicates Green Bay, Wisconsin]

[Rates in cents per cwt]

Commodity	K	R	M	S	G
Item 940-B. Sup. No. 13.—Boots or shoes as described in National Motor Freight Classification, et al. To Chgo				cl. 68¢	
Item 1110.—Butter, n. o. i. and/or eggs, n. o. i. To Chgo				38½	
Item 1310.—Cellulose, viz: Neck strips, towels, wood pulp, pads sanitary To Chgo				50	57
					48½

LESS TRUCKLOAD COMMODITY RATES APPLICABLE BETWEEN CHICAGO, ILLINOIS AND KENOSHA, RACINE, MILWAUKEE, SHEBOYGAN AND GREEN BAY, WISCONSIN—Continued.

Commodity	K	R	M	S	G
Item 1670.—Containers, empty, returned, viz: Milk cans, empty, returned, via the carrier handling loaded out-bound movement Fr.-Chgo				cl. 68¢ 20	
Item 1800A. Sup. No. 13.—Copper, brass, bronze, cupro nickel, and nickel silver articles, as described in item	24	26	29		
Item 1885. Sup. No. 22.—Cylinders, gas, empty, returned To Chgo				19	22
Item 2065A. Sup. No. 22.—Electrical appliances as described in item			31		
Item 2155A. Sup. No. 17.—Fish, fresh or frozen, as described in National Motor Freight Classification. (See Note.)					
NOTE.—Rates apply on net weight of shipment				60	79
Item 2645. Sup. No. 22.—Groceries (in mixed shipments) as described in item				37	43
Item 2725. Sup. No. 13.—					
Ingots, aluminum Fr. Chgo				47	47
Sheets, aluminum Fr. Chgo				53	53
521 Item 2900.—Knit goods and knitting factory Products, viz: Caps or mufflers, cotton or wool; Cardigan jackets; cotton gloves; cotton hosiery, unfinished; cotton neckties; cotton gloves, made from piece goods; cotton or woolen hosiery; gloves or mittens, workmen's, cotton or canton flannel, made from woven cloth or woolen, with or without leather fingers or palms and/or rubberized gauntlets, lined or not lined; gloves or mittens, workmen's, rubberized, in machine pressed burlapped bales or boxes; sweaters, cotton or woolen; underwear cotton or woolen To Chgo				61	
Item 2960C. Sup. No. 17.—Leather n. o. i., or rough splits, n. o. i., in boxes:					
Fr. Chgo				50	50
To Chgo				37	
Item 2970.—Leather, as described in item	34¼	34¼	34¼	28½	35
Item 2990.—Leather scrap To Chgo					
Item 3350 Sup. No. 13.—Meats, fresh, viz.: veal, loose or in packages To Chgo					59

522 LIST OF COMMODITY RATES APPLICABLE BETWEEN CHICAGO, ILLINOIS, AND KENOSHA, RACINE, MILWAUKEE, SHEBOYGAN, AND GREEN BAY WISCONSIN, WITH MINIMUMS OF 5,000 AND 10,000 POUNDS.

[Explanation of column headings: K indicates Kenosha, R indicates Racine, M indicates Milwaukee, S indicates Sheboygan and G indicates Green Bay, Wisconsin.]

[Rates in cents]

Commodity	K		R		M		S		G	
	5M	10M	5M	10M	5M	10M	5M	10M	5M	10M
Item 230.—Advertising matter, books and printed matters, etc., as described in item	21	17	23	17	25	18				
Item 235. Sup. No. 17.—Advertising matter, viz.: Window displays (paper or paperboard) flat or K. D. flat					35	25				
Item 350B. Sup. No. 13.—Agricultural implements and/or parts thereof (other than hand) as described in item	23	18	25	19	28	20				
Item 360B. Sup. No. 13.—Agricultural implements, hand or power, and/or agricultural implement parts, as described in National Motor Freight Classification Fr. Chgo								30		30
Item 400.—Alcohols, other than liquors, alcoholic, as described in item	19	16	21	17	23	17				

LIST OF COMMODITY RATES APPLICABLE BETWEEN CHICAGO, ILLINOIS, AND KENOSHA, RACINE, MILWAUKEE, SHEBOYGAN, AND GREEN BAY, WISCONSIN, WITH MINIMUMS OF 5,000 AND 70,000 POUNDS—Continued.

Commodity	K		R		M		S		G	
	5M	10M	5M	10M	5M	10M	5M	10M	5M	10M
Item 680.—Bags or bagging, in machine compressed bales, viz.: burlap, lined or not lined; cloth; cotton, clayed or not clayed, gunny; hemp, jute	24	18	25	18	28	21				
Item 800B. Sup. No. 13.—Batteries, electric, dry cells, etc., as described in item	21	17	23	17	25	18				
Item 810.—Battery boxes, covers or vents, N. O. I., asphalt composition, impregnated rubber or fibre boxes or crates, chemically hardened fibre	23	18	25	19	28	20				
Item 860B. Sup. No. 13.—Binder twine										28
Item 890.—Boards, chipboard, fibreboard, paperboard, pulpboard, strawboard, in packages or bundles. Boxes, pulpboard or strawboard, flat or folded flat Fr. Chgo							30			
Item 910.—Books, N. O. I.		17		17		18				
Item 1240.—Carpet lining, as described in item					36					
Item 1270.—Casing rings, furnace, house heating, in bundles, six to a bundle Fr. Chgo					31					
523 Item 1330.—Cellulose film and cellulose articles as described in item	21	17	23	17	18	25				
Item 1350B. Sup. No. 21.—Chemicals, drugs, medicines, and toilet preparations, as described in note 40 of Central States Motor Freight Bureau, Inc., Motor Freight Tariff No. 15, Agent W. L. Meyer's MF-I. C. C. No. B-64. In bulk, in bags, barrels or other inner containers (other than glass) in barrels, boxes, kegs, kits, or pails	19	16	21	17	23	17				
Item 1460A. Sup. No. 13.—Chemicals, drugs, medicines, and toilet preparations, as described in note 40 of Central States Motor Freight Bureau, Inc., Motor Freight Tariff No. 15, Agent W. L. Meyer's MF-I. C. C. No. B-64, in carboys with necks protected	23	18	25	19	28	20				
Item 1470B. Sup. No. 21.—Chemicals, drugs; medicines, and toilet preparations, as described in note 40 of Central States Motor Freight Bureau, Inc. Motor Freight Tariff No. 15, Agent W. L. Meyer's MF-I. C. C. No. B-64. In glass, in barrels, boxes, or cartons	27	23	29	23	32	24				
Item 1510.—Chocolate or chocolate coating, in packages. Cocoa and cocoa butter, in metal cans in crates, cartons, barrels, boxes or in bulk in barrels or bags					18	16				
Item 1530.—Cloth and paper, viz: Paper, cloth or cloth strips, gummed	19	16	21	17	23	17				
Item 1550.—Clothing, viz.: men's suits and overcoats (not fur lined or with fur collars), in boxes, trunks or cases					30					
Item 1590.—Coal hods (scuttles) or vases, not nested	32	26	35	28	39	31				
Item 1600A. Sup. No. 13.—Compounds cleaning; cooking fats; glycerine; lard substitutes; oils, other than petroleum; soap, n. o. i. soap products, n. o. i.; toilet preparations, n. o. i.; Fr. Chgo								28		

LIST OF COMMODITY RATES APPLICABLE BETWEEN CHICAGO, ILLINOIS, AND KENOSHA, RACINE, MILWAUKEE, SHEBOYGAN, AND GREEN BAY, WISCONSIN, WITH MINIMUMS OF 5,000 AND 70,000 POUNDS—Continued.

Commodity	K		R		M		S		G	
	5M	10M	5M	10M	5M	10M	5M	10M	5M	10M
Item 1610.—Confectionery, as described in item	19	16	21	17	23	17				
Item 1630B. Sup. No. 13.—Containers, empty returned, viz.: drums (iron, steel, or wood)	20		23		26					
524 Item 1640B. Sup. No. 13.—Containers, empty returned, viz., carboys, in cases. Cylinders, gas (iron or steel)	11	8½	11½	8½	13	10				
Item 1800A. Sup. No. 13.—Copper, brass, bronze, cupro nickel and nickel silver articles as described in item	19	16	21	17	23	17				
Item 1860.—Cotton piece goods, plain, or rubber coated, in wrapped bales, bundles or rolls, or in boxes or crates. Raincoats	43 cl. 27	23	29	23	50¢ cl. 32	35¢ cl. 24				
Item 1890.—Dessert preparations, such as ice cream, jelly, pie or pudding preparations, n. o. i., gelatine; n. o. i. To Chgo.							30			
Item 1895 Sup. No. 13.—Doors, not glazed. Wood mouldings and/or sash; K. D. To Chgo.								32		32
Item 2065A. Sup. No. 22.—Electrical appliances, as described item						24				
Item 2170B. Sup. No. 13.—Foil, viz.: aluminum or tin with or without paper back and/or lead and tin combined with zinc with or without paper back, as described in National Motor Freight Classification. Fr. Chgo.									51	
Item 2235. Sup. No. 13.—Foodstuffs, canned or preserved, also groceries as described in Item 4150 of Central States Motor Freight Bureau, Inc., Motor Freight Tariff No. 15, Agent W. L. Meyers' MF-I. C. C. No. B-64 also the following grain products, viz.: barley; barley pearled; grits, N. O. I.; groats or hominy; dry split peas; dry whole peas; cereal food preparations, N. O. I.	21	20	23	22	25	23				
Item 2290B. Sup. No. 13.—Fruit, fresh other than cold pack, viz.: apples, in standard bushel baskets							139½		139½	
Item 2340D. Sup. No. 23.—Fruit, fresh, other than cold pack and/or vegetables, fresh or green other than cold pack, as described in National Motor Freight Classification	25	21	25	21	30	25				
525 Item 2450.—Furniture, metallic or wooden, viz, cabinets, filing (filing cases), with or without casters or wheels, steel. Desks, steel, S. U crated To Chgo									53	
Item 2480.—Furniture, metallic or wooden, viz, chairs or stools, N. O. I. folded flat. Tables, n. o. i., steel folded flat To Chgo									55	
Item 2520.—Gases, compressed, as described in Item Nos. 14 to 20, inclusive, page 105 of National Motor Freight Classification	19	16	21	17	23	17				
Item 2700. Sup. No. 20.—Hides, leather, as described in item	19	15	21	15	23	15				
Item 2710.—Hoods, S. U., furnace, house heating, in boxes or crates					54					
Item 2730.—Ink, printing, in bulk in kits or pails or in bulk in barrels	21	17	23	17	25	18				

See footnotes at end of table.

LIST OF COMMODITY RATES APPLICABLE BETWEEN CHICAGO, ILLINOIS, AND KENOSHA, RACINE, MILWAUKEE, SHEBOYGAN, AND GREEN BAY, WISCONSIN, WITH MINIMUMS OF 5,000 AND 70,000 POUNDS—Continued.

Commodity	K		R		M		S		G	
	5M	10M	5M	10M	5M	10M	5M	10M	5M	10M
Item 2850A. Sup. No. 13.—Iron or steel articles (except reinforcement bars), as described in Note 9 of Central States Motor Freight Bureau, Inc., Motor Freight Tariff No. 15, Agent W. L. Meyers, MF-I. C. C. No. B-64, also, Rings, rolled steel, n. o. i.; sheet, perforated; stair treads or risers, iron or steel, with or without metal or mineral filling										
Item 2880.—Jacks or jack screws, wheeled or not wheeled, mounted or not mounted, in barrels, boxes or crates, in bundles or on skids, or weighing each 25 pounds or over, loose		15		16		17				
Item 2970.—Leather, as described in item	19	16	21	17	23	17				
Item 3050D. Sup. No. 21.—Liquors, alcoholic, n. o. i.	21	17	23	17	25	18				
Item 3320.—Material, roofing, as described in item	27	24	29	25	32	27				
Item 3410A. Sup. No. 13.—Meats and packing house products as described in item	19	16	21	17	23	17				
526 Item 3520.—Metals scrap, having value for remelting purposes only, viz; aluminum, ashes, billets, blooms, borings, buffings, dross, grained or granulated; ingots, pigs, sawings, skimmings, slabs, turnings. Exception, slabs. Rates apply only on material not further finished than hot-rolled, rough hot-pressed or rough hot-hammered and not smooth or surface finished, commercially known as billets, blooms, ingots, pigs or slabs	Fr Chgo						34		40	
Item 3530.—Metals, scrap, having value for smelting or remelting purposes only, viz; aluminum. Loose or in packages	21	17	23	17	25	18				
Item 3540.—Metals, scrap, having value for smelting or remelting purposes only, viz; brass, bronze, copper, cupro nickel, lead, nickel silver, tin, tin plate, or terne plate, white metal, white metal alloy or zinc drippings, dross, scrap, skimmings and/or sweepings. Also scrap electrotype plates, scrap or used metal type, scrap pewter, scrap stereotype plates	21	17	23	17	25	18				
Item 3545. Sup. No. 13.—Metals, scrap	19	16	21	17	23	17				
Item 3675. Sup. No. 13.—Paints, lacquers or varnishes as described in item 4515 of Central States Motor Freight Bureau, Inc., Motor Freight Tariff No. 15, Agent W. L. Meyers MF-I. C. C. No. B-64	To Chgo							26		30
Item 3820.—Paper and paper articles as described in item					23	18				
Item 3840.—Paper articles, viz: envelopes and/or drinking cups, folded flat, in cases or cartons	19	16	21	17	23	17				
Item 3950.—Plumbers' goods, as described in item					24	21				
	25	20	27	21	29	22				

See footnotes at end of table.

LIST OF COMMODITY RATES APPLICABLE BETWEEN CHICAGO, ILLINOIS, AND KENOSHA, RACINE, MILWAUKEE, SHEBOYGAN, AND GREEN BAY, WISCONSIN, WITH MINIMUMS OF 5,000 AND 70,000 POUNDS—Continued.

Commodity	K		R		M		S		G	
	5M	10M	5M	10M	5M	10M	5M	10M	5M	10M
Item 3990.—Racks, empty returned, used for the transportation of engine cooling radiators (cores and/or shells assembled) shipped in racks Fr. Chgo			34							
527 Item 4000A. Sup. No. 13.—Radiators; engine cooling (cores and/or shells assembled) shipped in racks To Chgo		30	26							
Item 4125A. Sup. No. 13.—Seeds, viz: Alfalfa; beans, dried; canary; clover; corn; cow peas; garden, N. O. I.; grass; hemp; kaffir; lespedeza; millet; milo; rape; sorghum; sorghum grains; soy beans; sudan; sunflower; timothy; vetch, pop corn (not popped)	23	21	25	22	28	25				
Item 4160.—Sheet steel ware n. o. i., with or without copper bottoms, in barrels, boxes or crates not nested	32	26	35	28	39	31				
Item 4170.—Signs, electric, neon, set up. (See note A.) NOTE A.—Shipper to load and brace shipments and provide all materials used for this purpose Fr. Chgo		31		32		34				
Item 4190.—Skates, ice or roller	27	23	29	23	32	24				
Item 4200.—Soap or compounds; as described in item	19	16	21	17	23	17				
Item 4340.—Tanning materials, as described in item	19		21		23					
Item 4490.—Washboilers, copper, galvanized or tin, with or without copper bottoms. Not nested	32	26	35	28	39	31				
Item 4510.—Wax or polish, automobile, boat, floor or furniture, gummed shellac	19	16	21	17	23	17				
Item 4540.—Window shade material, viz: Shade cloth, uncut and underrated, in packages; shade rollers shade sticks and shade roller fixtures, in packages	23	18	25	19	28	20				
Item 4560.—Wire cloth, viz: Brass, bronze, copper or nickel-copper in packages	19	16	21	17	23	17				
Item 4630.—Yarn, viz: Cotton, worsted or silk in boxes, cases or trunks Fr. Chgo					35					
528 Item 4640.—Yarn cones, (empty returned) packed in trunks To Chgo					20					
Item 4650A.—Sup. No. 13.—Yeast, dry, liquid or compressed To Chgo					35	18				

[1] No. bd. rate 15[2].
[2] Minimum 8,500 pounds.

Tariff Authority: Central Motor Freight Association, Inc., Harry M. Slater, Agt., MF-I. C. C. No. 4; Central States Motor Freight Bureau, Inc., W. L. Meyers, Agt., MF-I. C. C. No. B-4.

529

Exhibit No. 15

Witness: Johnson

Before the Interstate Commerce Commission

Docket No. —

Exhibit showing commodity rates applicable between Chicago, Illinois, and Kenosha, Racine, Milwaukee, Sheboygan, and Green Bay, Wisconsin, and the number of comomdity items applying on each rate. Authority Central States Motor Freight Bureau, Inc., W. L. Meyers, Agt., Motor Freight Tariff No. 30, MF- I. C. C. No. B-106.

BETWEEN CHICAGO, ILLINOIS AND—

Kenosha, Wisconsin		Racine, Wisconsin		Milwaukee, Wisconsin		Sheboygan, Wisconsin		Green Bay, Wisconsin	
Rate	No. of Rates	Rate	No. of Rates	Rate	No. of Rates	Rate	No. of Rates	Rate	No. of Rates
LESS TRUCK LOAD									
24¢	1	26¢	1	29¢	1	19¢	1	22¢	1
34½¢	1	34½¢	1	31¢	1	29¢	1	35¢	1
	2		2	34½¢	1	29½¢	1	43¢	1
					3	37¢	2	47¢	1
						47¢	1	48½¢	1
						50¢	2	50¢	1
						53¢	1	53¢	1
						60¢	1	57¢	1
						61¢	1	59¢	1
						64¢	1	79¢	1
							12		10
GOMMODITY RATES WITH 5,000 POUND MINIMUM									
11¢	1	11½¢	1	13¢	1	30¢	2	40¢	1
19¢	15	21¢	15	18¢	1	34¢	1	51¢	1
20¢	1	23¢	9	20¢	1		3	53¢	1
21¢	8	25¢	7	23¢	16			55¢	1
23¢	5	27¢	1	24¢	1				4
24¢	1	29¢	4	25¢	8				
25¢	2	30¢	1	26¢	1				
27¢	4	34¢	1	28¢	6				
32¢	3	35¢	3	29¢	1				
	40		42	30¢	2				
				31¢	1				
				32¢	4				
				34¢	1				
				35¢	3				
				36¢	1				
				39¢	3				
				54¢	1				
					52				

COMMODITY RATES WITH 10,000 POUND MINIMUM

Kenosha, Wisconsin		Racine, Wisconsin		Milwaukee, Wisconsin		Sheboygan, Wisconsin		Green Bay, Wisconsin	
Rate	No. of Rates	Rate	No. of Rates	Rate	No. of Rates	Rate	No. of Rates	Rate	No. of Rates
8½¢	1	8½¢	1	10¢	1	28¢	1	28¢	2
15¢	2	15¢	1	15¢	1	28¢	1	30¢	2
16¢	13	16¢	1	16¢	1	30¢	1	32¢	1
17¢	8	17¢	21	17¢	14	32¢	1	39½¢	1
18¢	5	18¢	1	18¢	10	39½¢	1		
20¢	2	19¢	4	20¢	4		5		6
21¢	2	21¢	2	21¢	2				
22¢	3	22¢	2	22¢	1				
24¢	1	23¢	3	23¢	1				
26¢	3	25¢	1	24¢	4				
31¢	1	26¢	1	25¢	3				
	41	28¢	3	27¢	1				
		32¢	1	31¢	3				
			42		46				

530 *Exhibit No. 16*

Witness: Johnson.

Before the Interstate Commerce Commission

Docket No. —

Exhibit showing various less truckload commodity rates applicable between Chicago, Illinois and Kenosha, Racine, Milwaukee, Sheboygan, and Green Bay, Wisconsin, compared with class or exception ratings on same items and showing percentage commodity rate is of the exception or class rating. Also less truckload rates with minimums of 5,000# and 10,000# applicable between Chicago, Illinois and Racine, Kenosha, and Milwaukee, compared with class or exception ratings also showing percentage commodity rates are of the class or exception ratings.

531 Partial list of less truckload commodities between and to and from Chicago, Illinois, and Kenosha, Racine, Milwaukee, Sheboygan, and Green Bay, Wisconsin, showing rates that would apply under classes or exception ratings, present commodity ratings and percentage that commodity ratings is of classes or exception ratings.

(1) Indicates class or exception ratings.
(2) Indicates present commodity ratings.
(3) Indicates percentage commodity rate is of class or exception rating.

[Rates in cents per cwt.]

Item 940B. Sup. No. 13.—Boots or shoes as described in National Motor Freight Classification. (1st class.):		
Sheboygan, Wis., to Chicago, Ill	(1)	68¢
Do	(2)	38½¢
	(3)	57%
Item 1310.—Cellulose, viz.: Neck strips, towels, pads, sanitary. (Exception Col. 75):		
Green Bay, Wis., to Chicago, Ill	(1)	59¢
Do	(2)	48½¢
	(3)	82%
Item 2065A. Sup. No. 22.—Fans, electric. (1st class):		
Bet. Chgo., Ill., and Milw., Wis	(1)	53¢
Do	(2)	31¢
	(3)	58½%
Item 2065A. Sup. No. 22.—Generators & motors, electric meters, electric cooking ranges, magnets, electric lifting. (2nd class):		
Bet. Chgo., Ill., and Milw., Wis	(1)	45¢
	(2)	31¢
	(3)	69%
Item 2725. Sup. No. 13.—Sheets, aluminum. (2nd class):		
Chicago, Ill., to Green Bay, Wis	(1)	67¢
Do	(2)	53¢
	(3)	79%
Item 2980C. Sup. 17.—Leather N. O. I. or rough splits, N. O. I. in boxes. (2nd class):		
Sheboygan, Wis., to Chgo., Ill	(1)	58¢
Do	(2)	37¢
	(3)	64%
Item 2980C. Sup. No. 17.—Leather, N. O. I. or rough splits, N. O. I. in boxes. (2nd class):		
Chgo, Ill., to Green Bay, Wis	(1)	67¢
Do	(2)	50¢
	(3)	75%
Item 2970.—Leather as described in item. (2nd class):		
Bet. Chgo., Ill., and Kenosha, Wis	(1)	38¢
Do	(2)	34¼¢
	(3)	90%
Item 2970.—Leather as described in item. (2nd class):		
Bet. Chgo., Ill., and Racine, Wis	(1)	41¢
Do	(2)	34¼¢
	(3)	83%
Item 2970.—Leather as described in item. (2nd class):		
Bet. Chgo., Ill., and Milwaukee, Wis	(1)	45¢
Do	(2)	34¼¢
	(3)	76%
Item 2990.—Leather scrap, over 3½¢ per pound. (2nd class):		
Sheboygan, Wis., to Chgo., Ill	(1)	58¢
Do	(2)	28½¢
	(3)	49%
Item 3350.—Meats fresh, viz. veal. (1st class):		
Green Bay, Wis., to Chgo., Ill	(1)	79¢
Do	(2)	59¢
	(3)	75%

532 List of commodity rates applicable between Chicago, Illinois, and Kenosha, Racine, and Milwaukee, Wisconsin, showing rates that would apply under Classification or Exception Ratings, present Commodity Ratings and percentage present commodity ratings are of the classification or exception ratings.

(1) Indicates classification or exception ratings.
(2) Indicates present commodity rates.
(3) Indicates percentage present commodity rates are of classification or exception ratings.
Explanation of column headings.—K Indicates Kenosha, Wisconsin; R Indicates Racine, Wisconsin; M Indicates Milwaukee, Wisconsin; 5M Indicates Commodity Rate taking 5,000# Minimum; 10M Indicates Commodity Rate taking 10,000# Minimum.

[Rates in cents per 100 pounds]

Commodity	K		R		M	
	5M	10M	5M	10M	5M	10M
Item 230. Tariff No. 30.—Advertising matter, books and printed matter, viz.; calendars; magazines; periodicals; price lists; sheets printed or not printed. (2nd class):						
(1)	36	34	39	37	43	41
(2)	21	17	23	17	25	18
(3)	58%	50%	59%	46%	58%	44%
Almanacs; catalogs; circulars; leaflets; pamphlets; telephone directories. (3rd class exception):						
(1)	32	32	34	34	37	37
(2)	21	17	23	17	25	18
(3)	66%	53%	68%	50%	68%	49%
Item 235. Sup. 17, Tariff No. 30.—Advertising matter, viz.: window displays (paper or paperboard); flat or K. D. flat. (2nd class):						
(1)					43	41
(2)					35	25
(3)					81%	61%
Item 400. Tariff No. 30.—Alcohols, other than liquors, alcoholic, as described in item. (3rd class):						
(1)	30	29	32	31	35	33
(2)	19	16	21	17	23	17
(3)	63%	55%	66%	55%	66%	51%
Item 809B, Sup. 13, Tariff No. 30.—Batteries, electric, dry cells, not spent. (Column 55 exception):						
(1)	25	25	26	26	29	29
(2)	21	17	23	17	25	18
(3)	84%	68%	88%	65%	86%	62%
Item 810. Tariff No. 30.—Battery boxes, covers or vents, N. O. I., asphalt composition, impregnated rubber or fibre, boxes or crates, chemically hardened fibre. (2nd class):						
(1)	36	34	39	37	43	41
(2)	23	18	25	19	28	20
(3)	64%	53%	64%	51%	65%	49%
Item 910. Tariff No. 30.—Books, N. O. I. (2nd class):						
(1)		34		37		41
(2)		17		17		18
(3)		50%		46%		44%
Item 1270. Tariff No. 30.—Casings rings, furnace house heating, in bdls., 6 to a bdle. No. bd. only. (1st class):						
(1)					50	
(2)					31	
(3)					62%	
Item 1510. Tariff No. 30.—Chocolate or chocolate coating; cocoa butter. (Column 32 exception):						
(1)					28	28
(2)					18	16
(3)					64%	57%
Item 1530. Tariff No. 30.—Paper strips, gummed. (4th class exception):						
(1)	23	23	24	24	27	27
(2)	19	16	21	17	23	17
(3)	83%	70%	88%	71%	85%	63%
533 Item 1530. Tariff No. 30.—Cloth or cloth strips, gummed. (1st class).						
(1)	43	41	46	43	50	48
(2)	19	16	21	17	23	17
(3)	44%	39%	46%	40%	46%	35%

Commodity	K		R		M	
	5M	10M	5M	10M	5M	10M
Item 1550. Tariff No. 30.—Clothing, viz.; men's suits and overcoats (not fur lined or with fur collars in boxes, trunks or cases. (1st class):						
(1)					50	
(2)					30	
(3)					60%	
Item 1590. Tariff No. 30.—Coal hods (scuttles) or vases, not nested. (1st class):						
(1)	43	41	46	43	50	48
(2)	32	26	35	28	39	31
(3)	74%	63%	76%	65%	78%	65%
Item 1860. Tariff No. 30.—Cotton piece goods, rubber coated. (2nd class):						
(1)	36	34	39	37	43	41
(2)	27	23	29	23	32	24
(3)	75%	68%	74%	62%	74%	59%
Item 1860. Tariff No. 30.—Raincoats. (1st class):						
(1)	43	41	46	43	50	48
(2)	27	23	29	23	32	24
(3)	63%	56%	63%	53%	64%	50%
Item 2520. Tariff No. 30.—Gases, compressed, as described in items Nos. 14 to 26 inclusive page 105 of National Motor Freight Classification. (Classes 3, 1 & Double 1st)—						
Double first:						
(1)	87	85	93	94	103	101
(2)	19	16	21	17	23	17
(3)	22%	19%	23%	19%	22%	17%
First:						
(1)	43	41	46	43	50	48
(2)	19	16	21	17	23	17
(3)	44%	39%	46%	40%	46%	35%
Third:						
(1)	30	29	32	31	35	33
(2)	19	16	21	17	23	17
(3)	63%	55%	66%	55%	66%	51%
Item 2710. Tariff No. 30.—Hoods, furnace house heating in boxes or crates. (Dble 1st class):						
(1)					103	
(2)					54	
(3)					52%	
Item 2880. Tariff No. 30.—Jacks, automobile, mtd. (3rd class):						
(1)	30	29	32	31	35	33
(2)	19	16	21	17	23	17
(3)	63%	55%	66%	55%	66%	51%
Item 2970. Tariff No. 30.—Leather, as described in item. (2nd class):						
(1)	36	34	39	37	43	41
(2)	21	17	23	17	25	18
(3)	58%	50%	59%	46%	58%	44%
Item 3840. Tariff No. 30.—Paper articles, viz.; envelopes and/or drinking cups, folded flat, in cases or cartons. (2nd class):						
(1)					43	41
(2)					24	21
(3)					56%	51%
Item 3890. Tariff No. 30.—Racks, empty returned, used for the transportation of engine cooling radiators, (cores and/or shells assembled in racks). (Dble 1st class). Fr. Chgo.:						
(1)			93			
(2)			34			
(3)			37%			
Item 4000A. Sup. 13, Tariff No. 30. Radiators, Cooling (cores and/or shells assembled, shipped in racks). (2nd class). To Chgo.:						
(1)			39	37		
(2)			30	26		
(3)			77%	70%		
534 Item 4160. Tariff No. 30.—Sheet steel ware, n. o. i., with or without copper bottoms, in barrels, boxes or crates, not nested. (1st class):						
(1)	43	41	46	43	50	48
(2)	32	26	35	28	39	31
(3)	74%	63%	76%	65%	78%	65%

Commodity	K		R		M	
	5M	10M	5M	10M	5M	10M
Item 4540. Tariff No. 30.—Window shade material, viz: shade cloth, uncut and undecorated in packages. Shade rollers, shade fixtures in packages. (Colum' 65 exception):						
(1)	29	29	31	31	34	34
(2)	23	18	25	19	28	20
(3)	79%	62%	81%	61%	82%	59%
Item 4170. Tariff No. 30.—Signs, electric, neon, set-up. (1½ times first class):						
(1)		63		67		75
(2)		31		32		34
(3)		49%		48%		45%
Item 4190. Tariff No. 30.—Skates, ice or roller. (2nd class):						
(1)	36	34	39	37	43	41
(2)	27	23	29	23	32	24
(3)	75%	68%	74%	62%	74%	58%
Item 4490. Tariff No. 30.—Washboilers, copper, galvanized or tin, with or without copper bottoms, not nested. (1st class):						
(1)	43	41	46	43	50	48
(2)	32	26	35	28	39	31
(3)	74%	63%	76%	65%	78%	65%
Item 4590. Tariff No. 30.—Wire cloth, viz: brass, bronze, copper or nickel copper, in packages. (3rd class exception):						
(1)	32	32	34	34	37	37
(2)	19	16	21	17	23	17
(3)	59%	50%	62%	50%	62%	46%
Item 4630. Tariff No. 30.—Yarn, viz: cotton, worsted, or silk, in boxes, cases or trunks. (1st class). Fr. Chgo.						
(1)					50	
(2)					35	
(3)					70%	

Tariff authority.—National Motor Freight Classification No. 2, C. F. Jackson, Agent, MF-I. C. C. No. 4; Central States Motor Freight Bureau, Inc., W. L. Meyers, Agt., Motor Freight Tariff No. 30, MF-I. C. C. B-168; Motor Freight Tariff No. 15, MF-I. C. C. B-64; Central Motor Freight Association, Inc., Harry M. Slater, Agt., Motor Freight Tariff No. 4, MF-I. C. C. No. 4.

Exhibit 17

535 OCTOBER —, 1937.

Bureau of Motor Carriers, Interstate Commerce Commission, Washington, D. C.

GENTLEMEN: Inclosed please find my Motor Freight Tariff No. —, M. F.-I. C. C. No. —, for filing under the Motor Carrier Act. In filing this tariff, I am directed by the carriers participating therein to submit, in their name and for their account, the following explanatory statement:

"The participating carriers for several years past have been engaged in concentrating and distributing l. c. l. freight, between the stations named in the tariff, for a number of carloading or freight forwarding companies. Prior to April 1, 1936, this transportation was furnished under contract, and subsequently thereto by their concurrence in the through forwarder rates filed by such companies with the Commission. These carriers now deem it desirable that these charges be published as carrier rates open to the general public. This the attached tariff undertakes to do by providing proportional concentration and distribution rates, applicable upon

freight which has been transported to or which is destined to be transported from the head line stations shown in truck load or carload consignment moving under tariffs or schedules lawfully on file with the Interstate Commerce Commission.

"This is the second attempt by these carriers to make effective these rates. The earlier tariff was rejected by the Bureau upon several grounds, to be noticed later, in its letter dated September 11, 1937. While these carriers respectfully maintain that such action of the Bureau was arbitrary, unlawful and beyond its powers, they have amended the provisions to meet the criticism of that letter as far as it is possible to do so, and still accomplish the objective of the tariff—an objective which they insist is proper and lawful, and solely within their managerial discretion.

536 "The first criticism of the former tariff was that the rates were published 'to apply on pool truck and pool car traffic only' which said to be 'improper.'

"The application of the present tariff is not so restricted. Item 5 provides that the rates named apply on all Freight, with certain specified exceptions, transported to the origin stations * * * as part of a truck load or carload consignment and immediately reshipped in the original package as an l. c. l. shipment.' It applies on traffic of all shippers and to all carload traffic.

"It next was asserted that the provisions of the former tariff resulted 'in an indefinite statement of rates in violation of rule 3 (e) of the Tariff Circular M. F. No. 1.' This criticism cannot be leveled at the provisions of the present tariff which (a) names definite and specific charges per hundred pounds between definitely stated origins and destinations for the entire movement under its provisions of the l. t. l. shipment, and (b) requires that the inbound or outbound truck load or carload movement to the origin or from the destination of such l. t. l. shipment be under tariffs lawfully on file with this Commission, thereby enabling any 'prospective shipper accurately and definitely to ascertain the total rate charges applicable upon the through movement.'

"No attempt has been made to comply with the fifth paragraph of the Bureau's letter, which erroneously declares that 'proportional rates are applicable only on through moving shipments which remain in the possession of the carrier.' The following decisions show that in dealing with railroads, this commission has expressly approved proportional rates in circumstances where the shipment does not remain in the possession of the carrier.

"(a) On the movement of 'ex lake' grain and ore from Lake Erie Ports to New York and elsewhere transported to the Lake Ports, by either a common or private carrier or the owner; and

on cargo coal trans-shipped by private water carriers from Lake Erie Ports.

"Trunk Line Ex Lake Iron Ore, 69 I. C. C. 589;

"Maritime Ass'n of Boston v. Railroads, 95 I. C. C. 539.

537 "Lake Cargo Coal Rates, 101 I. C. C. 513, 126 I. C. C. 309, 200 I. C. C. 4;

"(b) On movement of 'ex river' coal from Ohio River Points after transportation by private barge on Ohio River:

"West Virginia Coal & Coke Case, 185 I. C. C. 211, 200 I. C. C. 182.

"American Rolling Mill v. B. & O., 173 I. C. C. 357.

"(c) On concentration at compresses or factor's warehouses of cotton in l. c. l. quantities for subsequent reshipment in carload lots:

"Cotton From and To Points in Southwest, 208 I. C. C. 677, 701, 216 I. C. C. 17.

"(d) On concentration at a single station of l. c. l. shipments of dairy products for subsequent reshipment in carload lots:

"Duluth Chamber of Commerce, 156 I. C. C. 156, 120 I. C. C. 683.

"(e) On shipments of lumber from California Ports which had been brought to the Port by private carriers:

"In Lumber from San Francisco Bay points, 78 I. C. C. 760.

"(f) On shipments of miscellaneous commodities by rail and water to New England Ports and thence by motor truck-common, contract or private carrier:

"Tariffs Embracing Motor Truck, etc., 91 I. C. C. 540.

"It is to be observed that, contrary to the statement of the Bureau's letter, 'appropriate transit arrangements' existed in none of the foregoing cases and that in all of them the shipment was not in the continuous possession of the carrier, and for part of the time was in possession of the shipper or of private carriers not subject to the Act, and that in cases (a), (b), (e) and (f) cited, it was wholly impossible for a shipper to calculate the through rate.

"It is to be further observed contrary to the statement of the Bureau's letter that 'No change is made in the character of the shipment but it remains either as an l. c. l. or a c. l. shipment from point of origin to destination,' the Commission, in the case of cotton concentration and dairy products (cases (c) and

538 (d) above, held that the proportional rate can be made to apply to a through movement, part of which is carload and part l. c. l.

"The final criticism of the former tariff is that the proposed rate results in obvious discrimination and is at variance with

the general principle that common carriers publish their rates to be applied for all alike who may offer shipments for transportation.'

"The carriers earnestly deny that there is any discrimination, obvious or otherwise. The present tariff is open to all shippers alike. The difference between c. l. and l. c. l. shipments has been long recognized by this Commission as warranting entirely different rate adjustments.

"The Commission has no authority to reject a tariff solely because it may regard the rates or rules as discriminatory. Moreover, carriers are only required to treat all shippers and traffic alike under like circumstances and conditions. In C. N. O. & T. P. v. I. C. C., 162 U. S. 184, 197, the classic statement of the Supreme Court on this right is made. The Court there said that in the absence of unjust discrimination or a showing that a rate is unreasonable, the law leaves carriers free 'to make special rates looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce and of their own situation and relation to it, and generally to manage their important interests upon the same principles which are regarded as sound and adopted in other trades and pursuits.'

"It should also be kept in mind that the law does not, as many people seem to think, condemn discriminations as such. On the contrary, the law recognizes the right of carriers to discriminate in the sense of treating different things differently. The law only condemns the rates and rules of the carriers when they are shown to be unreasonable or unjustly discriminatory. The Supreme Court succinctly states the rule. 'Any fact which produces an inequality of conditions and a change or circumstances justifies an inequality of charge'—I. C. C. v. B. & O., 539 145 U. S. 263, 284. In any event, section 217 (a) does not authorize the Commission to reject a tariff because it provides discriminatory rates. Discrimination is a question of fact. Before this commission may lawfully condemn a tariff because of discrimination, the law requires that the matter be made the subject of a formal proceeding in which the carriers have a full hearing.

"The participating carriers respectfully insist that the inclosed tariffs be accepted and filed as required by the Motor Carrier Act, and in any event before the same are again rejected, that they be given an opportunity to appear and be heard before Division 5, so that any such rejection shall be by a final and definite order of the Commission."

Respectfully submitted.

540 *Whitehead Exhibit 18*

Before the Interstate Commerce Commission

Docket No. 247

MOTOR EXPRESS, INC., OF INDIANA

TONNAGE HANDLED (FEB. 1-FEB. 14, 1938) TERRE HAUTE, INDIANAPOLIS

	Pounds % of total	Revenue, % of total	Average rate
Local tonnage	54%	55.5%	28¢
Interline tonnage	18%	14.7%	22¢
Tonnage from consolidators	28%	29.8%	29¢

CLASS RATES

From	To	Class 1	Class 2	Class 3	Class 4	Division of rate received [1]
Terre Haute, Ind	Indianapolis, Ind	50	42½	33½	25	
Terre Haute, Ind	Cleveland, Ohio	94	80	66	47	23¢
Terre Haute, Ind	Dayton, Ohio	72	61	50	36	23¢
Terre Haute, Ind	Detroit, Mich	92	78	64	46	26¢

[1] Terre Haute, Indianapolis portion.

Authorities for rates.—W. L. Meyers No. 1 MF I. C. C. No. 1; Wintermute No. 101 MF I. C. C. No. 1.

541 *Whistler Exhibit 19*

Before the Interstate Commerce Commission

Docket No. —

LAFAYETTE INDIANAPOLIS TRANSIT LINE, LAFAYETTE, INDIANA

TONNAGE HANDLED (JAN. 1-DEC. 31, 1937)

	Pounds	Revenue	Average rate
Local tonnage	8,640,311	$29,823.99	34.5¢
Interline tonnage	6,297,736	14,402.80	22.8¢
Tonnage from consolidators	2,195,066	6,371.32	20.3¢

CLASS RATES

From	To	Class 1	Class 2	Class 3	Class 4	Division of rate received [1]
Lafayette, Ind	Indianapolis, Ind	46	39	32	23	
Lafayette, Ind	Cleveland, Ohio	87	74	61	44	21.3¢
Lafayette, Ind	Detroit, Michigan	82	70	57	41	22.8¢
Lafayette, Ind	St. Louis, Mo	79	67	55	40	19.2¢
Lafayette, Ind	Toledo, Ohio	75	64	53	38	21.2¢

[1] Indianapolis, Lafayette portion.

Authorities for rates.—W. L. Meyers No. 1 MF I. C. C. No. 1; Slater No. 3 MF I. C. C. No. 3.

542 *Whistler Exhibit 20*

I. & S. M. 247

Lafayette Indianapolis Transit Co., Inc., Lafayette, Indiana

SCHEDULE OF OPERATING EXPENSES, YEAR 1937

Equipment maintenance:	
Repair to revenue equipment	$1,311.83
Tires and tubes	981.47
Total equipment maintenance	2,293.30
Transportation expenses:	
Wages of drivers & helpers	8,706.79
Fuel for revenue equipment	2,941.67
Lubricants for revenue equipment	239.93
Pick-up and delivery expenses	7,910.32
Total transportation expense	19,798.73
Sales tariff & advertising expenses:	
Solicitors salaries	1,091.32
Tariff and schedules	184.62
Subscriptions & advertising	150.00
Total sales tariff & adv. expenses	1,425.94
Insurance and safety expenses:	
P. L. and P. D. insurance	989.67
Workmen's compensation insurance	474.12
Cargo insurance	453.14
Cargo loss and damage	645.68
Other insurance	676.51
Total insurance	3,239.12
Administrative and general expenses:	
General office salaries	4,980.09
Traveling expenses of managers	553.24
Heat, lights and power	173.06
General office supplies & expense	993.82
Communication service	766.72
Banking service charges	116.10
Bad debts	45.43
Misc. general expenses	1,484.81
Total administrative and general expenses	9,113.27
Depreciation expenses:	
Depreciation of revenue equipment	2,473.25
Depreciation of autos	305.71
Depreciation of furniture and fixtures	128.64
Total depreciation	2,907.60

543 Operating taxes and licenses:

Gasoline tax	$1,427.95
License for revenue equipment	231.72
Weight tax	188.73
Social security taxes	667.95
Other taxes	424.28
Total operating taxes and licenses	2,940.63
Operating rents	1,700.11
Interest and finance charges on equipment obligations	213.16
Total operating expenses for year 1937	43,631.86
Total freight handled year 1937	17,133,113
Average operating cost per Cwt	0.254

544 SCHEDULE OF TERMINAL TO TERMINAL OPERATING EXPENSES, YEAR 1937

Direct operating expenses:

Fuel for revenue equipment	$2,941.69
Lubricants for revenue equipment	239.93
Gasoline tax	1,427.95
Maintenance of revenue equipment	1,311.83
Tires and tubes	981.47
Truck and trailer licenses	231.72
Weight tax	188.73
Wages of drivers and helpers	4,527.10
Depreciation of rev. equipment	2,473.25
Total direct operating expenses	14,323.67

545 SCHEDULE OF EXPENSES OF INDIANAPOLIS TERMINAL, YEAR 1937

Direct operating expenses:

Office salaries	$2,446.08
Wages of dock helpers	1,252.33
Cartage paid out	7,910.32
Rents	860.00
Telephone expenses	503.54
Total direct operating expenses	12,972.07

SCHEDULE OF EXPENSES OF LAFAYETTE TERMINAL, YEAR 1937

Direct operating expenses:

Office salaries	$1,200.01
Wages of dock helpers and delivery drivers	2,927.56
Rents	840.11
Telephone	283.18
Total direct operating expenses	5,290.86

546 SCHEDULE OF ADMINISTRATIVE AND GENERAL EXPENSES APPORTIONABLE YEAR 1937

Administrative and general expenses (apportionable):

General office salaries	$1,274.00
Office supplies and expenses	993.82
Traveling expenses	553.24
Solicitors salary	1,091.32
Subscriptions and advertising	254.62
Social security taxes	667.95

Administrative and general expenses (apportionable)—Continued.	
Other taxes	$424.28
Insurance	2,593.44
Loss and damage	645.68
Heat, light and power	173.06
Bad debts	45.43
Bank service charges	116.10
Depreciation of office equipment	128.64
Depreciation of autos	305.71
Misc. general expenses	1,564.81
Total administrative and general expense apportionable	10,832.10
547 Length of haul	61 miles
Average payload	13,951#
Average freight per day received from consolidators	7,316#
Total freight handled 1937	17,133,113
Total revenue	$50,598.11
Total operating expense	$43,631.86
Ratio expense to revenue	86.2%
Assignable to executive salaries and dividends	13.8%
[1] Terminal to terminal costs per 100#	$0.0835

[1] Includes Pick-Up and Delivery performed by Road Haul Trucks.

($14,323.67 divided by total pounds)	
Average revenue per trip	$40.17
[1] Cost per mile terminal to terminal	$0.19
Cartage paid at Indianapolis	$5,804.09
Represents at 6¢ per cwt	9,673,333
Local freight 8,640,311#	
Interline 1,033,022#	
Property delivered by road haul trucks in Indianapolis	7,459,780
Consolidator freight 2,195,066	
Interline 5,264,714	
[1] Terminal to terminal costs	$11.65
(Average load×.0835)	
Terminal to terminal not including service with road-haul truck for pick-up or delivery	$9.06
Per cent of [1] terminal to terminal assignable to road haul ($9.06 divided by $11.65)	78%
22% of total terminal to terminal ($14,332.67×.22)	$3,153.19
Cost of pick-up or delivery Indianapolis with road haul truck per 100#	$0.021
(50%—$3,153.19 assigned Indianapolis)	
Actual expenses terminal to terminal per 100#	$0.0652
($14,323.67 less $3,153.19 divided by total pounds)	
Distribution remaining expenses per 100#:	
$10,832.10 administrative and general expense	
7,172.07 Indianapolis expense less $5,800.00	
5,290.86 Lafayette expense	
213.16 Interest and finance charges shown on Exhibit Schedule of Operating Expenses	
23,508.19 divided by 17,133,113	$0.137

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Total cost per 100# (Including Pick-Up or Delivery Indianapolis by Cartage Companies):	Total cost per 100#; terminal to terminal	delivery or pick-up Indianapolis by road-haul trucks
Terminal to terminal	$0.0652	$0.0652
Cartage Indianapolis	.06	.021
Distributed administrative and other cost	.137	.137
Dock help Indianapolis	.013	
($1,252.13 divided by 9,673,333)		
	.2752	.2232

9,673,333# × $0.2752 per 100 equals	$26,621.01
7,459,780# × $0.2232 per 100 equals	16,650.22
	43,371.23
9,673,333# × $0.286 per 100 equals	27,705.23
7,459,780# × $0.2135 per 100 equals	15,926.63
	$43,631.86

549 *Exhibit 21*

Before the Interstate Commerce Commission

Docket No. —

Southern Transportation Company, Columbus, Indiana

TONNAGE HANDLED (SEPT. 1-OCT. 1, 1937)

	Pounds	Revenue	Average rate
			Cents
Local tonnage	640,257	$1,821.61	28.5
Interline tonnage	654,461	1,322.82	20.2
Tonnage from consolidators	548,290	1,247.75	22.7

CLASS RATES

From—	To—	Class 1	Class 2	Class 3	Class 4	Division of rate received
						Cents
Columbus, Ind	Indianapolis, Ind	42	33	29	21	
Columbus, Ind	Cleveland, Ohio	87	74	61	44	21.3
Columbus, Ind	Chicago, Ill.	78	66	55	39	19.25
Columbus, Ind	Milwaukee, Wis	89	76	62	45	18.6

1 Columbus, Ind., portion.

Authorities for rates: W. L. Meyers No. 1 MF I. C. C. No. 1; Slater No. 6 MF I. C. C. No. 6; Slater No. 2 MF I. C. C. No. 2.

550. *Exhibit 22*

Before the Interstate Commerce Commission

Docket No. —

Statement Showing Distances, Rates Proposed, and Revenues Thereunder

	Miles	Rate¢ 100#	Truck-mile revenue 10,000#	Truck-mile revenue 14,000#	Truck-mile revenue 20,000#	Revenue per ton-mile
Ft. Wayne-Akron	51	23½	46	65	92	9
Muncie-Albany	12	15	125	175	250	25
Muncie-Alexandria	19	17	90	121	179	18
Indianapolis-Anderson	36	20	56	78	112	11
Muncie-Anderson	19	15	79	111	158	16
Ft. Wayne-Andrews	32	21	66	92	131	13
Ft. Wayne-Angola	41	25	61	85	122	12
Indianapolis Attica	78	25½	33	46	65	7
Ft. Wayne-Auburn	21	17	81	113	162	16
Indianapolis-Bedford	76	27	36	50	71	7
Indianapolis-Batesville	64	24	38	53	75	8
Ft. Wayne-Berne	35	27	77	108	154	15
Indianapolis-Bloomington	52	23½	45	63	90	9
Evansville-Boonville	18	17	94	132	189	19
Indianapolis-Brazil	55	23	42	58	84	8
Indianapolis-Cambridge City	52	30	58	81	115	12
Ft. Wayne-Churubusco	15	16	107	149	213	21
Indianapolis-Clarks Hill	50	28	50	70	100	10
Indianapolis-Columbus	47	21	48	67	95	10
Indianapolis-Connersville	59	24	42	59	84	8
Indianapolis-Crawfordsville	47	21	47	65	93	9
Indianapolis-Dunreith	39	30	77	108	154	15
Muncie-Eaton	11	17½	159	223	318	32
South Bend-Elkhart	14	12½	89	125	179	18
Muncie-Elwood	28	20	71	100	143	14
Muncie-Fiat	32	25	78	109	156	16
Indianapolis-Five Points	7	15½	221	310	443	44
Evansville-Ft. Branch	19	17½	92	129	184	18
Muncie-Ft. Wayne	70	30	43	60	86	9
Indianapolis-Frankfort	42	25	60	83	119	12
Indianapolis-Franklin	21	18	86	120	171	17
Evansville-French Lick	82	25½	31	44	62	6
South Bend-Goshen	24	15	63	88	125	13
Indianapolis-Greencastle	42	20	48	67	95	10
Indianapolis-Greenfield	21	20	95	133	190	19
Muncie-Hagerstown	25	15	60	84	120	12
Muncie-Hartford City	19	15	79	111	158	16
Evansville-Huntingburg	50	25	50	70	100	10
Muncie-Kokomo	33	23	47	66	94	9
Indianapolis-Lafayette	60	25	42	58	83	8
South Bend-LaPorte	26	20	77	108	154	15
Ft. Wayne-Ligonier	35	20	57	80	114	11
Indianapolis-Lebanon	27	19	70	99	141	14
Indianapolis-Logansport	70	25½	36	51	73	7
Indianapolis-Martinsville	30	19	63	89	127	13
South Bend-Michigan City	34	20	59	82	117	12
Muncie-New Castle	19	15	79	111	158	16
Indianapolis-Noblesville	21	20	95	133	190	19
Indianapolis-Pendleton	30	21	70	98	140	14
Muncie-Portland	30	15	50	70	100	10
Evansville-Princeton	26	19	73	102	146	15
Indianapolis-Rockport	167	40	24	34	48	5

Authority for distances: Road log of Indiana State Highway Commission.

551 *Exhibit 23*

Before the Interstate Commerce Commission

Docket No. —

Comparison of Rates Proposed With 4th Class Rates Applicable Within Indiana

[Rates in cents per 100 pounds]

	Rate proposed	15879 scale	Disque scale		Rate proposed	15879 scale	Disque scale
Akron-Ft. Wayne	23½	23	23½	Ft. Wayne-Muncie	30	25	24
Alexandria-Muncie	17	17	17½	Frankfort-Indianapolis	25	21	23
Anderson-Indianapolis	20	20	21	Franklin-Indianapolis	18	18	17½
Andrews-Ft. Wayne	21	21	22	French Lick-Evansville	25½	26	25½
Angola-Ft. Wayne	25	20	23½	Greencastle-Indianapolis	20	20	21
Attica-Indianapolis	25½	26	25½	Greenfield-Indianapolis	20	20	20½
Auburn-Ft. Wayne	17	17	17½	Huntingburg-Evansville	25	22	23
Batesville-Indianapolis	24	24	24	Kokomo-Muncie	25	22	23
Bedford-Indianapolis	27	27	26	Lafayette-Indianapolis	25	24	24
Berne-Ft. Wayne	27	20	20½	La Porte-South Bend	20	19	19
Bloomington-Indianapolis	23½	23	23	Lebanon-Indianapolis	19	19	19
Boonville-Evansville	17	17	17½	Logansport-Indianapolis	25½	26	25½
Brazil-Indianapolis	23	23	24	Michigan City-South Bend	20	20	22
Cambridge City-Indianapolis	30	23	23½	Noblesville-Indianapolis	20	18	18½
Columbus Indianapolis	21	21	22	Pendleton-Indianapolis	21	20	21
Connersville-Indianapolis	24	23	24	Princeton-Evansville	19	19	19
Crawfordsville-Indianapolis	21	21	22	Rockport Indianapolis	40	35	35½
Dunreith-Indianapolis	30	20	21				
Eaton-Muncie	17½	17	17½				
Elwood-Muncie	20	18	18½				
Ft. Branch-Evansville	17½	18	17½				

552 *Exhibit 24*

Before the Interstate Commerce Commission

Docket No. —

Proportional Rates Applicable in Ohio via Common Carrier Truck Lines

Portion of haul by motor truck	Miles	1	2	3	4	Average	Rates proposed
Chilicothe, Ohio to Columbus, Ohio [1]	46	24.6	21.1	17.1	12.3	18.8	25
Lancaster, Ohio to Columbus, Ohio [2]	30	27.5	23.5	19.3	14.0	21.1	21
Piqua, Ohio to Dayton, Ohio [3]	29	19.5	16.5	13.5	10.0	19.9	21
Springfield, Ohio to Washington Ct. House, Ohio [4]	39	21.9	18.4	15.4	11.1	16.7	30
Columbus, Ohio to New Philadelphia, Ohio [5]	109	43.8	37.2	30.6	22.2	33.5	
Columbus, Ohio to Galena, Ohio [6]	18	24.0	20.5	17.0	12.0	18.4	17½

[1] Through movement—Chilicothe, Ohio-Cincinnati, Ohio.
[2] Through movement—Lancaster, Ohio-Dayton, Ohio.
[3] Through movement—Springfield, Ohio-Piqua, Ohio.
[4] Through movement—Washington Ct. House, Ohio-Cincinnati, Ohio.
[5] Through movement—Middletown, Ohio-New Philadelphia, Ohio.
[6] Through movement—Springfield, Ohio-Galena, Ohio.

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Exhibit 25

Before the Interstate Commerce Commission

Docket No. —

Comparison of Rates Under Suspension With Those Applicable via Cincinnati & Lake Erie Railroad Company

				Miles	Rate		
					A	B	Ind.
0-10	Franklin,	Ohio—Middletown,	Ohio	5.6	11	9	
	Franklin,	Ohio—Miamisburg,	Ohio	6.4	12	9	
	Indianapolis,	Ind.—Five Points,	Ind.	7			15½
11-20	Dayton,	Ohio—Miamisburg,	Ohio	11.1	12	9	
	Middletown,	Ohio—Miamisburg,	Ohio	12.0	13	10	
	Middletown,	Ohio—Hamilton,	Ohio	12.8	12	9	
	Franklin,	Ohio—Dayton,	Ohio	17.0	12	9	
	Franklin,	Ohio—Hamilton,	Ohio	18.4	12	9	
	Evansville,	Ind.—Ft. Branch,	Ind.	19			17½
21-30	Dayton,	Ohio—Middletown,	Ohio	23.1	13	10	
	Cincinnati,	Ohio—Hamilton,	Ohio	23.6	13	10	
	Hamilton,	Ohio—Miamisburg,	Ohio	24.8	14	11	
	Springfield,	Ohio—Dayton,	Ohio	26.8	13	10	
	Indianapolis,	Ind.—Pendleton,	Ind.	30			21
31-40	Dayton,	Ohio—Hamilton,	Ohio	35.9	14	11	
	Middletown,	Ohio—Cincinnati,	Ohio	36.4	14	11	
	Miamisburg,	Ohio—Springfield,	Ohio	37.9	14	11	
	Indianapolis,	Ind.—Dunreith,	Ind.	39			30
41-50	Cincinnati,	Ohio—Franklin,	Ohio	42.0	14	13	
	Springfield,	Ohio—Franklin,	Ohio	44.3	15	12	
	Springfield,	Ohio—Dayton,	Ohio	44.4	13	10	
	Miamisburg,	Ohio—Cincinnati,	Ohio	48.4	16	12	
	Springfield,	Ohio—Middletown,	Ohio	49.9	15	12	
	Indianapolis,	Ind.—Frankfort,	Ind.	42			25
51-60	Springfield,	Ohio—Hamilton,	Ohio	50.1	16	13	
	Cincinnati,	Ohio—Dayton,	Ohio	59.5	16	12	
	Indianapolis,	Ind.—Cambridge City,	Ind.	52			30
61-70	Ohio—NONE						
	Muncie,	Ind.—Ft. Wayne,	Ind.	70			30
71-80	Columbus,	Ohio—Dayton,	Ohio	71.2	17	13	
	Indianapolis,	Ind.—Attica,	Ind.	78			25½
81-90	Miamisburg,	Ohio—Columbus,	Ohio	82.3	19	15	
	Springfield,	Ohio—Cincinnati,	Ohio	86.3	18	14	
	Columbus,	Ohio—Franklin,	Ohio	88.7	19	15	
	Evansville,	Ind.—French Lick,	Ind.	82			25½
	Columbus,	Ohio—Middletown,	Ohio	94.3	19	15	
	Columbus,	Ohio—Hamilton,	Ohio	107.1	20	16	
	Columbus,	Ohio—Cincinnati,	Ohio	130.7	21	17	

Authority, A and B: Cincinnati & Lake Erie Railroad Company tariff No. GFD 292, Ohio No. 121

554 *Exhibit 26*

Before the Interstate Commerce Commission

Docket No. —

STATEMENT OF QUANTITY LESS TRUCK LOAD RATES

When class rate is—	5,000	10,000	16,000
18	17	16	15
50	48	45	43
100	97	93	93
150	147	145	143
200	197	195	193
250	247	245	243

REDUCTION IN RATE BECAUSE OF VOLUME

14/30	1¢	3¢	4¢
31/50	2¢	5¢	7¢
51/250	3¢	5¢	7¢

Authority.—Central Motor Freight Assoc., Inc., Sup. 39 to Motor Freight Tariff No. 2, Slater, Agent, MF ICC No. 2. Applicable on shipments between Michigan points on the one hand and Indiana and Kentucky points on the other hand. On shipments of 10,000 pounds or more.

When less than truck load (L. T. L.) rating on shipment in National Motor Freight Classification is as shown	Class rates applicable will be shown below
1st (100) class	Second (85) class.
Lower than 1st (100) but not lower than second (85)	3rd (70) class.
Lower than second (85) but not lower than 3rd (70) class	Class 60.
Lower than 3rd (70) but now lower than class 60	Class F or 55.
Lower than class 60 but not lower than class F or 55	4th (50) class.

Authority.—Transamerican Freight Lines, Inc., Local and Joint Tariff No. 32, MF I. C. C. No. 54

555 *Exhibit 27*

Before the Interstate Commerce Commission

Docket No. —

STATEMENT AND COMPARISON OF RATES APPLICABLE ON FREIGHT ALL KINDS BETWEEN VARIOUS POINTS

[Rates in cents per 100 Lbs.]

From—	To—	Rate freight all kinds (a)	4th class rail rate (b)
1. Indianapolis, Ind	Chicago, Ill	27.0	36
2. Dayton, Ohio	Chicago, Ill	36.0	41
3. St. Louis, Mo	Cleveland, Ohio	50.0	58
4. St. Louis, Mo	Detroit, Mich	47.0	54
5. Cincinnati, Ohio	Chicago, Ill	36.0	44

Authorities.—(a) C., C., C. & St. L. I. C. C. 5746; (b) 1. Jones I. C. C. 2450, 2. Jones I. C. C. 2445, 3-4. Jones I. C. C. 2448, 5. Jones I. C. C. 2446.

556 *Exhibit 28*

Before the Interstate Commerce Commission

Docket No. —

STATEMENT SHOWING COMPARISON OF COMMODITY RATES MINIMUM 5,000 POUNDS FROM CHICAGO, ILL., LOUISVILLE, KY. AND CINCINNATI, OHIO, TO VARIOUS DESTINATIONS, WITH CONTEMPORANEOUS FOURTH CLASS RATES

	From—	To—	Commodity	Rate minimum 5,000 lbs.	4th class truck rate
1.	Chicago, Ill	Cincinnati, Ohio	Battery plates	40	44
2.	Chicago, Ill	Louisville, Ky	Battery plates	40	44
3.	Chicago, Ill	Louisville, Ky	Lead or tin foil	44	44
4.	Chicago, Ill	Cincinnati, Ohio	Veneer and lumber	40	44
5.	Chicago, Ill	Louisville, Ky	Veneer and lumber	40	44
6.	Chicago, Ill	Louisville, Ky	Paint	35	44
7.	Chicago, Ill	Cincinnati, Ohio	Paint	35	44
8.	Chicago, Ill	Louisville, Ky	Telephone pole line material	35	44
9.	Chicago, Ill	Cincinnati, Ohio	Telephone pole line material	35	44
10.	Cincinnati, Ohio	Chicago, Ill	Paint	40	44
11.	Cincinnati, Ohio	Chicago, Ill	Canned foodstuff	44	44
12.	Louisville, Ky	Chicago, Ill	Veneer & flooring	40	44

Authorities.—1-2-Item 1820-C Central States Motor Freight No. 30, Sup. 16, M.F.I. C. C.; 1-2-Item 1820-C Central States Motor Freight No. 30, Sup. 16, M F ICC B-106; 3-Item 2180-A Central States Motor Freight No. 30, Sup. 13, M F ICC B-106; 4-5-Item 3090 Central States Motor Freight No. 30, M F ICC B-106; 6-7-Item 3670 Central States Motor Freight No. 30, M F ICC B-106; 8-9-Item 4360 Central States Motor Freight No. 30, M F ICC B-106; 10-Item 1550-A Central States Motor Freight No. 32, Sup. 10, M F ICC B-107; 11-Item 960-C Central States Motor Freight No. 32, Sup. 10, M F ICC B-107; 12-Item 1390-A Central States Motor Freight No. 33, Sup. 11, M F ICC B-108.

557 *Exhibit 29*

Before the Interstate Commerce Commission

Docket No. —

STATEMENT SETTING FORTH PROPORTIONAL RATES ON VARIOUS COMMODITIES WHEN PORTION OF THROUGH TRANSPORTATION HANDLED IN CONNECTION WITH WATER CARRIERS

		Commodity	Proposed rate (a)	Local rate (b)	Percent (a) of (b)
1.	Toledo, Ohio, Ex Lake to St. Marys, Ohio.	Wood pulp	8.0	14.0	57
2.	Toledo, Ohio, Ex Lake to Carthage, Ind.	Wood pulp	12.0	18.0	67
3.	Toledo, Ohio, Ex Lake to Cincinnati, Ohio.	Wood pulp	14.5	18.0	81
4.	Toledo, Ohio, Ex Lake to Alton, Ill	Wood pulp	17.0	26.0	65
5.	Toledo, Ohio, Ex Lake to Federal, Ill	Wood pulp	17.0	26.0	65
6.	Toledo, Ohio, Ex Lake to Quincy, Ill	Wood pulp	17.0	27.0	63
7.	Detroit, Mich., Ex Lake to Quincy, Ill	Wood pulp	17.0	28.0	61
8.	New Orleans, La., Import to Indianapolis, Ind.	Fertilizer	29.0	31.5	92
9.	New Orleans, La., Import to Terre Haute, Ind.	Fertilizer	29.0	31.5	92
10.	New Orleans, La., Import to Poseyville, Ind.	Fertilizer	29.0	31.5	92
11.	New Orleans, La., Import to Vincennes, Ind.	Fertilizer	29.0	31.5	92
12.	New Orleans, La., Import to Chicago, Ill.	Fertilizer	31.0	33.5	93
13.	Adena, Ohio, to Toledo, Ohio; Lake Cargo.	Coal	143 T	199 T	72

STATEMENT SETTING FORTH PROPORTIONAL RATES ON VARIOUS COMMODITIES WHEN PORTION OF THROUGH TRANSPORTATION HANDLED IN CONNECTION WITH WATER CARRIERS—Continued

	Commodity	Proposed rate (a)	Local rate (b)	Percent (a) of (b)
558 14. Calvin, Ohio to Toledo, Ohio, Lake Cargo.	Coal	143 T	199 T	72
15. Crawford, Ohio to Toledo, Ohio, Lake Cargo.	Coal	143 T	199 T	72

Authorities.—(a) 1-7 N. Y. C. I. C. C. LS 1942; 8-12 Bogue I. C. C. 12; 13-15 Agent Kern I. C. C. 49; (b) 1-7 Jones I. C. C. 2445; Jones I. C. C. 2989; 8-12 Emerson I. C. C. 228; 13-15 Kern I. C. C. 49.

559 *Exhibit 30*

Before the Interstate Commerce Commission

Docket No. —

COMPARISON OF EXPORT RATES WITH DOMESTIC RATES

	Commodity	Export rate	Authority	Domestic rate	Authority
(1) Milwaukee, Wis. to New Orleans, La.	Machinery	55.0	Bogue, I. C. C. 10.	90.0	Sperry I. C. C. 342.
(2) Terre Haute, Ind. to New Orleans, La.	Canned Milk	38.0	Bogue, I. C. C. 10.	64.0	Sperry, I. C. C. 342.
(3) Vincennes, Ind. to New Orleans, La.	Canned Milk	38.0	Bogue, I. C. C. 10.	64.0	Sperry I. C. C. 342.
(4) Chicago, Ill. to New Orleans, La.	Paper Bags	38.0	Bogue, I. C. C. 10.	48.5	Sperry, I. C. C. 342.
(5) Terre Haute, Ind. to New Orleans, La.	Paper Bags	34.0	Bogue, I. C. C. 10.	47.5	Sperry, I. C. C. 342.
(6) Vincennes, Ind. to New Orleans, La.	Paper Bags	34.0	Bogue, I. C. C. 10.	42.5	Sperry, I. C. C. 342.

560 *Exhibit No. 31*

Witness: P. E. Johnson.

Before the Interstate Commerce Commission

Docket No. I. & S. M-247

Exhibit showing percentage relationship of present commodity rates to normal class or exception ratings, also proportional rates as provided in Central States Motor Freight Bureau, Inc., Motor Freight Tariff No. 61-A, MF-I. C. C. No. B-138, compared with Normal Class or Exception Ratings. Comparison being made with items taking 5,000 and 10,000 minimums applicable between Chicago, Illinois, and Kenosha, Racine, and Milwaukee, Wisconsin as provided in Exhibit No. 16, items used being those taking 1st, 2nd, and 3rd classes.

[Explanation of column headings: K indicates Kenosha, Wisconsin; R indicates Racine, Wisconsin; M indicates Milwaukee, Wisconsin; 5M indicates Commodity with 5,000# Minimum; 10M indicates Commodity with 10,000# Minimum]

Item No.[1]	Percentage commodity rates are of normal class or exception ratings						Percentage proportional rates are of normal class or exception ratings					
	K		R		M		K		R		M	
	5M	10M	5M	10M	5M	10M	5M	10M	5M	10M	5M	10M
	%	%	%	%	%	%	%	%	%	%	%	%
230	58	50	59	46	58	44	66	66	73	73	81	81
230	66	53	68	50	68	49	78	78	88	88	81	81
235					81	61					67	67
400	63	55	66	55	66	51	78	78	88	88	81	81
810	64	53	64	51	65	49	66	66	73	73	67	67
910		50		46		44		66		73		88
1270					62						56	
1530	44	39	46	40	46	35	56	56	62½	62½	56	56
1550					60						56	
1590	74	63	76	65	78	65	56	56	62½	62½	56	56
1860	75	68	74	62	74	59	66	66	73	73	67	67
1880	63	56	63	53	64	50	56	56	62½	62½	56	56
2820	44	39	46	40	46	35	56	56	62½	62½	56	56
2520	63	55	66	55	66	51	78	78	88	88	81	81
2880	63	55	66	55	66	51	78	78	88	88	81	81
2970	58	50	59	46	58	44	66	66	73	73	67	67
3840					56	51					67	67
4000A			77	70					73	73		
4160	74	63	76	65	78	65	56	56	62½	62½	56	56
4190	75	68	74	62	74	58	66	66	73	73	67	67
4490	74	65	76	65	78	65	56	56	62½	62½	56	56
4590	59	50	62	50	62	46	78	78	88	88	81	81
4630					70						67	
Total % all items	1,017	930	1,118	976	1,376	973	1,056	1,122	1,253	1,326	1,403	1,312
Average %	63.6	54.7	65.8	54.2	[2] 65.5	51.2	66.0	66.0	73.7	73.7	66.8	69.1

[1] Item numbers as shown in exhibit No. 16.
[2] Correcting oral testimony figures given as 1356 and 64.6.

561 Before Interstate Commerce Commission

I. & S. Docket No. M-247

In re: Proportional Rates Between Chicago and Wisconsin Points

Transcript of oral argument

Hearing Room "B," I. C. C. Building, Washington, D. C., Thursday, February 23, 1939

The above-entitled matter came on for oral argument before the full Commission at 10 o'clock, A. M.

Present: Commrs. Caskie (presiding), Splawn, Meyer, Aitchison, Eastman, McManamy, Porter, Lee, Mahaffie, Miller and Rogers.

Appearances

J. R. Turney, Washington, D. C., appearing for Respondents and Intervenors.

Robt. E. Quirk, Investment Building, Washington, D. C., appearing for Respondents, et al.

Chas. E. Cotterill, 70 East 45 Street, New York City, appearing for Middle Atlantic States Motor Carrier Conference, Inc., Intervenor.

Ferdinand Born, 512 Insurance Building, Indianapolis, Indiana, appearing for Indiana Respondents, Intervenor-Central States Motor Freight Bureau, Incorporated, and others.

Amos M. Mathews, Union Station, Chicago, Illinois, appearing for Class 1 Railroads operating in Western Trunk
562-563 Line Territory.

Edgar Watkins, Jr., Bona Allen Building, Atlanta, Georgia, appearing for Southern Motor Carriers Rate Conference.

564 PROCEEDINGS

Commr. CASKIE. The Commission will hear argument in I. & S. M-247, Proportional Rates between Chicago and Western Points.

Mr. Watkins, you and Mr. Mathews have a petition for leave to intervene, and such petition isn't necessary. In I. & S. proceeding you will be permitted to argue for 15 minutes here in this matter each, on the present record.

Mr. WATKINS. Yes, sir.

Commr. CASKIE. Mr. Turney, I believe you have 45 minutes.

Mr. TURNEY. If the Commission please, Mr. Quirk and myself have pooled our time, and I will open for approximately an hour, not more than that, and Mr. Quirk will close the argument for the respondents, if that is agreeable.

Argument of Mr. J. R. Turney

Mr. TURNEY. If the Commission please, this is a suspension case which involves tariffs published by motor carriers operating between Chicago and certain points in Wisconsin, such as Milwaukee, Racine, and a number of other points in that state. And also tariffs between certain so-called key points in Indiana, principally Indianapolis, Muncie, and Evansville, to all points within the State of Indiana. These tariffs name proportional rates; the rates are applicable, and I will read from the tariff the provisions with respect to the distribution rates out of the key points.

Tariff reads:

565 "All freight which has been transported to the origin stations."—that is, Chicago in the case of one carrier, and Indianapolis or Evansville in the case of the other—"as a part of a truckload consignment or carload consignment moving under tariffs or schedules on file with the Interstate Commerce Commission, and immediately reshipped in the original package as an LTL shipment."

Now, the reverse movement is identical in those terms except that it applies on LTL consignments to the key points where they are to be immediately reshipped as a part of a truckload or carload consignment from the key points. The traffic principally involved is forwarder traffic, although, as will hereafter appear in the argument, it applies on considerable other traffic, but the principal traffic and the principal reasons for these tariffs was the continuation of the handling of forwarder traffic.

Commr. MEYER. Truck forwarder, Mr. Turney?

Mr. TURNEY. No, sir. This is practically all truck, rail and truck. It is collected by truck at its origin, handled by rail for long distances and then distributed for short distances by truck, the coordinated truck, rail and truck movement.

Commr. CASKIE. Mr. Turney, when the bill, or in-bound bill, is submitted, we will say at Chicago, is that a forwarder bill or common carrier bill subject to our regulation?

566 Mr. TURNEY. Both. In order to carry out the shipment the forwarder billing from ultimate origin to ultimate destination must accompany the shipment in order to police it, and to show that it is entitled to the rate. The rail billing must be referred to and described also in order to police it. So both bills are appropriate references to accompany the billing of the motor carrier.

Now, these rates were initiated by the respondent truck lines for two reasons: First, to get their charges upon a uniform basis. These charges, which are now published in the form of proportional rates, have been in existence for a number of years. I think the record shows that it goes back to about 1930 or 1931. Prior to the Motor Carrier Act they were simply contract rates or divisions, or whatever you have. With the publication of the motor carrier rate the forwarders published their tariffs and filed them with the Motor Carrier Bureau, and the motor carriers participated and concurred in such tariffs. The rates here involved are those rates, smoothed out where there were any differences between them.

Now, the long-haul rates, that is, the forwarder rates from ultimate point of origin to ultimate destination, in all cases in this record, is identical with the rail rates.

Commr. PORTER. In all that complete long haul, the forwarder is the shipper, isn't he, from original start to destination
567 he issues the bill of lading, or rather he is the shipper, isn't he?

Mr. TURNEY. He may be, but he needn't be.

Commr. PORTER. Well, but he is, as a matter of fact, as to the rail part of it.

Mr. TURNEY. As to the rail part of it——

Commr. PORTER (interposing). Then do I understand when it gets to Chicago, say, or wherever it is to be distributed, then he becomes the carrier, is that right?

Mr. TURNEY. No.

Commr. PORTER. He occupies then a dual position.

Mr. TURNEY. The forwarder is the carrier throughout the transaction.

Commr. PORTER. How is that?

Mr. TURNEY. The forwarder is the carrier to cover his entire bill, but bear in mind that under this——

Commr. PORTER (interposing). But he can't be the carrier as to the railroad part of the haul, can he?

Mr. TURNEY. Well, I won't stop to debate that point, but certainly an express company is the carrier and so is the railroad. They are related——

Commr. AITCHISON. But we haven't decided that the forwarder is an express company, have we?

Mr. TURNEY. No; but you have decided he is a common carrier.

Commr. AITCHISON. But not a common carrier by railroad, is he?

568 Mr. TURNEY. Yes, sir; that's what your decision is.

Commr. AITCHISON. And is not a common carrier under any act we administer, is that correct?

Mr. TURNEY. That is correct.

Commr. AITCHISON. Well then, isn't it true, as Brother Porter has said, that he is a shipper so far as we are concerned?

Mr. TURNEY. I don't want to stop and argue that now. I want to finish my statement. I want to say this: that as I view it, it is improper to confuse a status and a relation. Now, anybody can have the relationship of a shipper. There isn't anything peculiar or sacred about it, but the status of a carrier or a business is entirely a different thing. Now, it is entirely possible for a railroad or any other carrier to be a shipper, just as it is possible for a forwarder to be a carrier and a shipper. It occurs frequently, and there is nothing unusual about it.

At the hearing these rates were suspended on the Commission's own motion without protest or objection by any person. No one appeared at the hearing in protest of these rates. No evidence was introduced at the hearing except in support of the rates.

Commr. CASKIE. May I ask this question? I understood you to say that the forwarding companies and the motor carriers participated in these rates. That was the original situation?

569 Mr. TURNEY. That was the situation at the beginning prior to the Motor Carrier Act, and is still continuing.

Commr. CASKIE. But these particular rates——

Mr. TURNEY (interposing). Will take the place of those rates.

Commr. CASKIE. Yes. How can that situation continue, Mr. Turney, since the Commission has found that under the Motor Carrier Act the forwarders are not either common or contract carriers, or both. Under Part 1 they are held to be shippers. Now, how can you continue rates in effect?

Mr. TURNEY. Mr. Chairman, we have filed today, on behalf of some thousand motor carriers a petition in the application asking this Commission to do one of two things: to either rescind the holding which you made without a record that it was unlawful for a motor carrier to participate in a joint rate with a carrier not subject to the Act, or to broaden that case and bring into issue the tariffs themselves so that there could be an order made by this Commission ordering the cancellation of those tariffs. In other words, the situation which you have stated is an impossible one at this time. You have stated a conclusion that is not in the form of an order. Those tariffs are in effect; they must be obeyed until they are lawfully cancelled or withdrawn.

Commr. CASKIE. But were they ever lawfully found?

570 Mr. TURNEY. That all depends on whether or not your decision is correct. There is nothing in the Act——

Commr. CASKIE (interposing). Wasn't that decision a final one? Have you a petition for reconsideration?

Mr. TURNEY. Your decision was certainly not final on that because you made no order with respect to it.

Commr. CASKIE. Was an order necessary?

Mr. TURNEY. Yes, sir.

Commr. AITCHISON. What order?

Mr. TURNEY. An order canceling those tariffs.

Commr. AITCHISON. Where do we find any authority in the law for that?

Mr. TURNEY. Well, if you have any authority at all to restrict these respondents on tariffs that are on file with this Commission, you have it in the Act.

Commr. AITCHISON. Why is it necessary for us to order cancelled something which is void?

Mr. TURNEY. Very well, sir. As I say, I haven't got time to debate that case here. We hope to do that here at some later time.

We now have this situation with these proportional rates here, published by these respondents on a record in which there is not one word of protest against them.

Commr. ROGERS. Mr. Turney, isn't it a fact that these proportional rates were filed simply as a means of getting around what the Commission found in the Acme case?

571 Mr. TURNEY. No, sir; that is not true. They were filed to protect what these respondents thought were necessary, and the record in this case shows the revenues which these respondents received in this particular case, a very few of them amount to over $600,000 a year. The record also shows, without dispute, that they will lose every dollar of that revenue, and that many of them will go into bankruptcy. Now, if that was to get around the order of the Commission, then the answer to your question is yes; and if it is to protect their business, as we maintain they have a right to do under the Act, then the answer is no.

Commr. ROGERS. What I had in mind was this: If it had not been for the finding in the Acme Case, if it had been found differently there, this situation wouldn't have arisen here.

Mr. TURNEY. Yes; it would. The testimony in this case is that the motor carriers themselves at their own initiation and prior to the time of the decision in the Acme case were desirous to get these divisions on a uniform basis between themselves, so that there would not be any disparity between them. They themselves initiated these proportional rate tariffs and that was prior to your decision.

Commr. ROGERS. So that we might have the full purport of this case before us—If Division 5 found these rates proper and let them go in, wasn't it the intention of the motor carriers and forwarders to do the same thing practically all over the whole country?

572 Mr. TURNEY. The forwarders have nothing whatever to do with it, but there is an intervention by some six hundred carriers in this case, which have been allowed, who state that that is exactly what they propose to do.

Commr. AITCHISON. I am wondering, as a matter of practice, when they began intervening in I. & S. cases.

Mr. TURNEY. Well, I don't know, but they are in here; I don't know whether it is proper or not. My understanding of the question is, and I may be wrong—I certainly am if Your Honors say so—but my understanding is that interventions or appearances in I. & S. cases are proper up to the time of the hearing: if they let the hearing go by they must then intervene. I may be wrong about that, but anyway they are here, and we have made no objection to their appearance or their intervention, or whatever you call it.

Now, the first point which I wish to make is this: that these motor carriers are the managers of their own business. They

have the right and the sole right to decide questions of business policy and judgment. The jurisdiction of this Commission to disturb and cancel tariffs which they filed is limited to cases where the tariffs violate some provision of the Act. Now, in view of the fact that these tariffs were filed by these carriers, that there is not one word of evidence in this record that shows any element of unlawfulness, we maintain that these tariffs
573 should go into effect as a matter of law, and we cite numerous decisions of this Commission and of the Supreme Court on that point. I want to emphasize again that the only evidence in this case was evidence which was voluntarily presented by the respondents and which showed without dispute that the rates were reasonable, nondiscriminatory, of proper form and lawful, and that there was not one word of contradictory evidence in this case.

Commr. CASKIE. Mr. Turney, along that line, let me ask you one question. Can these proportional rates be used on a through bill of lading, say on a through shipment from a point east of Chicago to points in Wisconsin by any common carrier subject to our Act?

Mr. TURNEY. I don't quite understand the question.

Commr. CASKIE. Well now, we have common carriers operating east of Chicago, both motor and rail carriers. Can they issue a through bill of lading in connection with these proportional rates west of Chicago?

Mr. TURNEY. Why, they can handle business into Chicago, yes.

Commr. CASKIE. Yes; but I am asking you if they can issue a bill of lading in connection with this through rate west of Chicago.

Mr. TURNEY. I see no reason why they can't. There is no joint rate, you understand, it is a proportional rate.

574 Commr. CASKIE. What rate would you use up to Chicago from a point east in order to cover——

Mr. TURNEY (interposing). The Chicago rate, the local rate from the point of origin to Chicago.

Commr. CASKIE. On an LTL shipment?

Mr. TURNEY. No; we could not handle it as an LTL shipment.

Commr. CASKIE. Well then, how could you ship, we will say, 500 pounds of boots and shoes from Cleveland, Ohio, to a point of Wisconsin on a through bill of lading using these proportional rates west of Chicago?

Mr. TURNEY. That would have to be moved by the carrier as a forwarder as a part of a carload consignment.

Commr. CASKIE. It couldn't be done by the common carrier itself, it couldn't issue the bill of lading?

Mr. TURNEY. It could be done by a shipper. A shipper could send a pool car to a——

Commr. CASKIE (interposing). My question was, could a common carrier issue a through bill of lading in connection with the proportional rates?

Mr. TURNEY. If they decided to operate as a forwarder.

Commr. MEYER. This is offered as a suggestion, Mr. Turney. It might be helpful for you to take a concrete case, if you happen to have one in mind, from or to a Wisconsin point, or some other point. We hear so little about Wisconsin. It might be well to take that in.

575 Mr. TURNEY. All right. We will take a movement of shoes from Brockton, Massachusetts—I believe they make shoes at Brockton, Massachusetts——

Commr. PORTER. They used to.

Mr. TURNEY. I think they make them all in St. Louis now. The shoes originate there and are given to a forwarder; the forwarder gives the shipper there a bill of lading as an LCL shipment at the rail rate from Brockton to, we will say, Racine, Wisconsin. That is handled by truck from Brockton to Boston; it is there consolidated at Boston with a large number of other LCL shipments that are moving to Chicago, or beyond, and that shipment as a part of a consolidated consignment of maybe 100 or 150 LCL shipments moves at a carload rate from the railway, from Boston to Chicago.

Commr. CASKIE. Your answer to me then, is no; a shipper cannot go to any common carrier without the intervention of forwarder at Brockton, Massachusetts, and bill 500 pounds of shoes from Brockton to these points in Wisconsin on through bill of lading using these proportional rates.

Mr. TURNEY. My answer is not quite that. My answer is that any motortruck line or railroad that sees fit, if I understand the law correctly, can do exactly that if it acts as a forwarder of the consolidated consignment.

Commr. CASKIE. Acts as a forwarder?

Mr. TURNEY. Yes.

576 Commr. CASKIE. Well then, the bill of lading is issued to the forwarder and not the original shipper?

Mr. TURNEY. No; the bill of lading will be issued to the shipper, the original shipper.

Commr. CASKIE. Now this was my point, that a shipper of 500 pounds of shoes by railroad or by truck could not take the shipment down and deliver it to the motor carrier or to the railroad and bill it through to a point in Wisconsin and get the benefit of this proportional rate. He would have to use a forwarder or some other agency to consolidate this shipment.

Mr. TURNEY. Mr. Chairman, this proportional rate is limited by its terms to carload consignments that come into Chicago; it does not apply on LCL shipments, if that answers your question.

Commr. CASKIE. That is the answer I wanted to get.

Mr. TURNEY. Yes, sir; it is limited to carload consignments that come in or move out, but it is not limited to forwarder traffic. For instance, take a shipper of shoes at Brockton. If it so desires, it may consolidate a car of shoes and ship it to Chicago at rail carload rate, and at Chicago distribute it under these tariffs. Likewise, any shipper at any of these points in Wisconsin may himself ship in at this rate to Chicago and pay this rate, provided he reships at Chicago in a consolidated consignment, and that is not limited to a forwarder consignment; it may be a pool car.

577 Commr. CASKIE. Yes. Well now, we know the shipments move in carload quantities and then are redistributed by jobbers in LCL quantities.

Mr. TURNEY. Yes.

Commr. CASKIE. Now, this proportional rate applies in connection with those redistributed carload shipments.

Mr. TURNEY. That is right.

Commr. CASKIE. It doesn't apply in connection with a through LCL shipment?

Mr. TURNEY. No; it does not apply to an LCL shipment, and it does not apply to your redistributed carload shipment unless it is in the original package and the movement is immediate. In other words, a movement must be continuous under this tariff. Now, I just want to point out——

Commr. AICHISON (interposing). Well, is there any possession taken of the goods at Chicago, using that as a point?

Mr. TURNEY. Yes.

Commr. AICHISON. Who takes the possession of the goods at this point?

Mr. TURNEY. The consignee of the carload, but he must show his billing to the motor carrier when it moves out.

Commr. AICHISON. I thought you answered the Chairman a moment ago that in the case cited that the LCL bill of lading was issued to the shipper at Brockton.

578 Mr. TURNEY. That is the forwarder's bill of lading.

Commr. AICHISON. He asked as to the bill of lading being issued——

Mr. TURNEY (interposing). I think I answered the Chairman that this term applied on LCL shipments to Chicago; that this tariff only applied when the freight arrived at Chicago as a part of a carload movement. There isn't anything new about this.

This exact situation was before you in the Freight Forwarding case, and you specifically held there that it was an interstate movement from the break-bulk point, and condemned as unlawful where the practice of one of the carriers was moving it on local state rates from the break-bulk point.

Now, getting back to this situation, I want to point out that there isn't a definite and unqualified finding of unlawfulness anywhere in the report of Division 5. I just want to skim for a moment what their findings are, and I am using their words. They hold that it is a question whether it is a true proportional rate. Now, what has that got to do with it? There is nothing in the law that says a carrier must have a true proportional rate, or any other kind of rate. What if it is questioned? If it is questionable, the doubt must be resolved in favor of the carrier; you must find that it is unlawful.

Now, similarly, they say there is a doubt whether the rate is compensatory. We say there isn't any such doubt, but what if there is. Again, the doubt must be resolved in favor
579 of the carrier. You must find on the evidence that the rates are not compensatory. Again, they say it is designed for a special traffic. What of it? All commodity rates are designed for a special traffic. There is no more reason for saying that a tariff which applies on merchandise traffic is any more stabilized than one which applies on shoes or wheat or mill products. All of our commodity rates are designed for special traffic, and in many cases, as you know, specific commodity rates are designed for a specific shipper at a specific point because there is no other shipper there, and under the ordinary circumstances there will never be anybody else there.

Now, the other reason is that the record is not convincing that higher rates than these would cause the traffic to be lost. Again, there is no finding that there was. And again, the carrier is entitled to make that decision for himself as to whether or not the rates are as high as the traffic will bear. And finally it is said that these rates will perpetuate the all-commodity rates, and again I submit to Your Honors that there is nothing unlawful about all-commodity rates in the Motor Carrier Act. There isn't a word in that Act that says that you are to perpetuate, for all eternity rail classification of commodities upon motor carriers; and furthermore, I want to point out that the all-commodity rate applies to carload traffic. This tariff is not limited to
580 traffic which moves into the break-bulk point in carload quantities. It applies also—all-commodity rates, I should have said. It applies to traffic that moves in on any kind of a carload rate, class or commodity. It is not restricted to the all-

commodity rate. Now, the only way in which it might possibly affect the all-commodity rate is that the rate itself, that is, the LCL rate, applies on a large number of LCL commodities; but again, there are numbers of exceptions in the tariffs, and there are some hundreds of items upon which higher rates on a percentage basis are applied to light and bulky articles, maintaining the principles of the classification insofar as they are accurate.

So I want to pass now, if I may, to my second point, and that is the form of the tariff is lawful. In the first place, Division 5 says that there is doubt whether or not it is a through movement. Now, that doubt was resolved by this Commission in the Freight Forwarding case, because, as I have said, in that case you specifically said that it was a through movement and was subject to the Interstate Commerce Act.

Commr. CASKIE. We might have been wrong.

Mr. TURNEY. Well, that isn't the particular finding in that case upon which I would make that observation.

Commr. CASKIE. You think we were at least right about that?

Mr. TURNEY. Not altogether. I shall stop and explain that.

581 Commr. CASKIE. No; that isn't necessary.

Mr. TURNEY. The reason for it is that I think that where the rate is connected up by a tariff provision, it then becomes a part of a through movement. If there is no connection and there is complete disassociation, then it is not a through movement. Now, I may be wrong about that, as I am about 75 percent of the things I say, but you asked for my view, and that is it.

Now, the question is whether or not it is a through movement. The billing, so far as the real consignor and the real consignee is concerned, if it is handled by a forwarder—and again I say this is not limited to forwarder traffic, but if it is handled by a forwarder, is from ultimate point of origin to ultimate point of destination, that is, from Brockton to Racine, and that bill accompanies this shipment all the way and is used as a basis for delivery by the motor carrier.

Commr. CASKIE. Well, unless the forwarder handles it all the way through there is a change in the consignee at Chicago, is there not?

Mr. TURNEY. There is no change in the LCL shipment. There is a change in the consolidated shipment, if that answers your question.

Now, the point seems to be made—at least it was made by the Motor Carrier Bureau and seems to be squinted at in the
582 report of Division 5—I didn't use that word invidiously at all, but what I meant was that there was no direct finding

with respect to it—and that is that you couldn't have a proportional rate where the commodity, where there was a carload movement for part of the journey and an LCL movement for the remainder of the journey.

Now, we have collected and there is an exhibit in this record of any number of cases where there have been proportional rates approved by this Commission, and in some cases ordered by this Commission, where exactly that situation prevails, and where there was a change or where it was possible. For instance, there is no provision that your Ex-Lake rates must be in carload quantities into the port.

Commr. CASKIE. Well now, isn't that covered by a specific provision of the Act, rates to and from the ports, proportional rates?

Mr. TURNEY. Well then, we will move on to cotton concentration rates. Certainly, there is no difference there. Where you have a rate, and the same thing is true on poultry and butter and eggs, both of them specifically ordered by this Commission, where the traffic is collected in LCL quantities, is moved into a concentration point——

Commr. CASKIE (interposing). Not on proportional rates. Isn't it on local rates?

Mr. TURNEY. No; it is moved in on a local rate that is paid and subsequently refunded back for a charge that is considerably less than the local rate for these concentration charges.

583

Commr. CASKIE. Now, in connection with cotton, does not the cotton move into the concentration point on LCL or any quantity rates, local rates, full locals?

Mr. TURNEY. When they are not paid.

Commr. CASKIE. In the first instance?

Mr. TURNEY. In the first instance, but they are refunded back.

Commr. CASKIE. Now, when the cotton is reshipped in carloads, the refund is made of the inbound charge and then you go back and charge a carload rate on the origin of each bale of cotton——

Mr. TURNEY (interposing). Plus the concentration charges.

Commr. CASKIE. Well, in cases where they have no concentration charge, you apply the——

Mr. TURNEY (interposing). Well then, you will have a proportional rate or nothing. Where you have a concentration charge you have a proportional rate of whatever it is.

Commr. CASKIE. Well now, is it a proportional rate? Don't you pay the full local in, and you pay when you reship the cotton the full carload, not proportional, the full carload rate out?

Mr. TURNEY. You pay it, but you get it back, Mr. Chairman. When you stop paying it, why then you do, but the rate that is

charged is the rate that consists of a carload rate all the way
584 through plus a penalty charge for the concentration which penalty charge in all respects is identical with the proportional rate. Now, I don't care what nickname you call it. It doesn't make any difference whether you call it a proportional rate or a class charge or a concentration charge, it is nevertheless the same identical situation where you are collecting LCL quantities and shipping it out in carload quantities, and that is all that is being done here.

Commr. CASKIE. But you are never hooking up an LCL rate in connection with a carload rate to make your through charge?

Mr. TURNEY. Well, I don't know whether you call it a rate or not. You are hooking up a charge on LCL movement with a charge on a carload movement. Now, whether it is a proportional rate, a charge, or whatever it is, that is what you are doing, and that is what you are doing here, and I don't think these tariffs would be any more lawful if we were to call this a charge, or a transit charge, instead of a proportional rate. As I see it, there is nothing in the Act that limits the right of a carrier and makes proportional rates in that fashion. Nothing whatever is said that it is illegal to have proportional rates on traffic in different quantities.

Commr. MEYER. Can you mention some other commodities?

Mr. TURNEY. Yes; butter and eggs and poultry.

Commr. CASKIE. Does that work the same way as cotton rates, moving on original rates, and then when it is reshipped as a carload, the carload rate is charged from the original point of origin?

585 Mr. TURNEY. No; I think the carload rate in the case of the butter and eggs is charged from the concentration point with a penalty charge for the concentration.

Commr. SPLAWN. That is a transit proposition?

Mr. TURNEY. If you want to call it that, then this is a transit also; there is no difference. I don't want to argue with you about words and names. There isn't anything more transitting about that than there is about this.

Commr. MEYER. Now, in Wisconsin, for instance, you have logs in the mill products service.

Mr. TURNEY. Yes; that is right.

Commr. MEYER. That is just like cotton, isn't it?

Mr. TURNEY. Well, except they usually come in in carload in both cases, but they are not the same logs; they are the same lumber.

Commr. MEYER. Yes; I understand that.

Commr. EASTMAN. So far as the Ex-Lake rates are concerned, they were charged long before the Act said anything about proportional rates in connection with water carriers, weren't they?

Mr. TURNEY. I think so; yes, sir.

Commr. EASTMAN. That came into the Act in 1912.

Mr. TURNEY: I don't want to dwell on this too long, but I want to mention also, just to give my friend, Mr. Watkins, something to talk about in his 15 minutes, that there is in the record a
586 tariff of his that is practically identical with this tariff applying on motor traffic, and it was introduced as one of the tariffs in evidence. Also, there were introduced the tariffs of the Texas carriers identical in their provisions and applying on precisely the same traffic, both rail and motor in Texas which was before the Commission in the Freight Forwarding case and not condemned.

Now, as to what the true function of a proportional rate is: I desire to, if I may, read what you said in a case, which as I see it, is identical with this case. It was the Starrin-New Haven case. There you had a boat line, and a motortruck, who were at that time not subject to the jurisdiction of this Commission. There was a rail movement at the other end, so it was necessary for the boat line to publish a tariff with this Commission. The points involved were certain interior points in Connecticut and Massachusetts. The tariff involved provided joint proportional rates to New Haven in connection with the motor carrier rate from New Haven to the interior point; the through over-all rate, the truck rate plus the proportional rate, was the equivalent of a competitive all-rail rate. Now, that was the situation, and this is what Your Honors said about it:—Bear in mind now that that was at the time when the trucks occupied exactly the same position as the forwarders now, if your decision in 2,200 is correct; that is, they were common carriers but not subject to the Act.

587 "In our opinion such proportional rates are justified by the decision of the Supreme Court in the Texas & Pacific Railway v. I. C. C., 126 U. S. 197, when it can be shown that the traffic coming from beyond to which the proportional rates apply, is surrounded by and subject to substantially different circumstances and positions than attach to the traffic originating locally at the port."—Now what are the differences?—"In this case it is clear that the traffic which originates at Meriden, New Britain, Wallingford, and Waterbury is subject to substantially different circumstances and conditions than attach to traffic originating at New Haven because of the through rate in connection with the New Haven System"—that is the railroad—"from these inland points which can only be met by the Starrin-New Haven by publication of proportional rates from New Haven." The situation

there was identical with respect to the carrier's status and the carrier's set-up, and we insist that however vicious the forwarder may be, until he is put out of business, he is entitled to the same treatment of any other person in the United States under the Interstate Commerce Act.

We also insist that these respondents in their dealings with other carriers are entitled to the same treatment which you gave the rail carriers. There you permitted them to make proportional rates in connection with the common carrier rates of carriers not subject to the Act for the purpose of meeting the
588 rates of carriers who were subject to the Act. Now, exactly that situation is here, and that is the right which these respondents are asking.

I want to pass briefly the question of compensatory charges. It was said in the Division's report that there wasn't any showing that there was any different service. This is taken from one of the exhibits in the case. It was made for a study by the respondent carriers, one very carefully made over a long period of time and is representative. It shows here the average number of shipments.

Commr. MILLER. Do you want us to see that?

Mr. TURNEY. I will get on this side. Now, it shows there that on connecting line traffic for each stop the carriers have 1.8 shipments of connecting line traffic; on local traffic one and a quarter shipments per stop, and on forwarder traffic 6.3. With this carrier it is 10.4 against one and a fifth approximately. With this one it is 14 shipments to a stop. Now, with the weight, the forwarder's weight per stop is over a ton; the others are 700 pounds and 1,100 pounds. In this case it is 500, 300, and 5,600 pounds to the forwarder or over 10 times as much, and in this case it averages 7,500 pounds, for the forwarder, which is approximately 2½ times that of other interline traffic, and over 5 times that of local traffic. Now, what is the reason for that?

Commr. CASKIE. Aren't they principal carriers for forwarder traffic?

Mr. TURNEY. No, sir; the record shows that this for-
589 warder traffic is their other way traffic; they are bound to flow. They handle a lot of other traffic—I think they did, as I recall, approximately between 30 and 40 percent. I am not positive but it is in the record. Now, what is the reason for that? The reason is this: that under that tariff one complete terminal is eliminated. In other words, these respondents, if it is a distributive movement, that they pick up all the forwarder shipments at one time with their road haul truck. They do not handle it through their terminal station, they do not provide a pick-up service for it, but distribute it direct from this road haul

truck. Well, that is shown here pretty clearly in this case which is the long line, which is the Racine carrier who has the longest haul, I think. This carrier here is really a pick-up and delivery within the Chicago metropolitan area, but you can see here the one complete terminal cost is saved on every shipment, and that is the testimony in the record.

Commr. CASKIE. Can a shipper, if he has his freight on his own truck, delivering in the same quantities to the carrier west of Chicago that the forwarder delivers to, get the benefit of these proportional rates?

Mr. TURNEY. If it moves in as a truckload to Chicago; yes, sir.

Commr. CASKIE. If he moves it in in his own equipment is the rate available?

590 Mr. TURNEY. No.

Commr. CASKIE. Well, wouldn't he eliminate this terminal service to which you refer?

Mr. TURNEY. I doubt it very seriously.

Commr. CASKIE. Well, if he delivered it at the same rate the forwarder delivers it, wouldn't he eliminate it?

Mr. TURNEY. If he did exactly what the forwarder does; yes, but he wouldn't do it; it isn't done.

Furthermore, the record shows, and by the way I might say that the average cost——

Commr. AITCHISON (interposing). Suppose he has a caravan of a half dozen truckloads of some commodity and he moves it into Chicago, where is the extra charge?

Mr. TURNEY. Mr. Commissioner, if he has any such load as that he moves it by truckload movement. Why should he bring in a truckload with his own truck and turn it over to the these respondents or anybody else? Why shouldn't he go on with it? We ought to deal with what is on the record. There isn't anything about that in the record, and I say from a practical standpoint it can't be.

Commr. AITCHISON. Oh, it is practical. If he goes to Chicago he can move it out by rail.

Mr. TURNEY. I want to say this: that from another standpoint this is a regular movement that comes daily. The trucker knows, and the respondent knows exactly what he is going to

591 get. With an isolated movement as that he must take it into his terminal and sort it and put it in with his other deliveries. This way, his deliveries are all made out for him; he has no accounting costs, he has no solicitation costs, and the truckmen are unanimously of the opinion, as they testified in the record, that the cost of handling this traffic is much less than any traffic which they handle.

Now, as to the revenue. This statement was made for a period of a year and involves $600,000. The average revenue which the respondents received on local traffic—this respondent was 18.6 cents. The hauls were approximately the same. On forwarder traffic 50 percent more. On interline traffic 10.5 cents. In other words, the forwarder traffic paid 2½ times as much as the other interline traffic, and it paid 50 percent as much as the local traffic. Bear in mind that these are the rates in this case. They were based on the present charges which, as the record shows, were identical with the proposed rate. Now, with this carrier, the average on local traffic was 26.9 cents, the forwarder traffic approximately the same, although, as we have shown, there was a difference—here, there is one complete terminal eliminated as compared to this local traffic where the two stations handled pick-up as well as delivery. With interline traffic, which is similar from a handling standpoint to this traffic, the revenue was 17.7 cents, or less than ⅔rds of this amount that was paid by these rates.

592 Now, with this carrier the local traffic is 30.6 cents, and the forwarder traffic 30 cents, a difference of 6 miles, and the other interline traffic 22.3 cents; so these rates are not of any particular advantage to the forwarder. This traffic is not getting any benefit here because, as these respondents testified, and as an analysis of all their bills for years, shows conclusively the rates which are being charged are as high or higher than they receive for similar service of their local and interline business. That is all the difference that they have.

Commr. CASKIE. Mr. Turney, how is it possible that these rates being lower, these proportional rates than the local rates, still produce more revenue than the local rates would produce?

Mr. TURNEY. These rates are not quite third class and the local rates do not average anything like third class.

Commr. CASKIE. Is not that the answer?

Mr. TURNEY. That is the answer.

Commr. CASKIE. Then the answer is that this forwarder traffic is the traffic that falls in a higher class?

Mr. TURNEY. That is not necessarily so, Mr. Commissioner. The answer is——

Commr. CASKIE (interposing). Of course, it is not necessarily so, but isn't it generally true?

Mr. TURNEY. With this particular traffic I do not know; I doubt it.

Commr. CASKIE. Now, the local traffic consists of all
593 kinds of traffic, low grade and high grade, low rate and high rate?

Mr. TURNEY. That is right. But this rate, bear in mind, is an average rate, and it is shown that the average rate is higher than the average revenue for the same sort of traffic.

Commr. CASKIE. From the same sort of traffic?

Mr. TURNEY. Yes.

Commr. CASKIE. Well now, let's go back to that again. If it is the average traffic, the same sort of traffic, how is it that lower rates produce greater revenue?

Mr. TURNEY. They are not lower rates.

Commr. CASKIE. Well, aren't these proportional rates lower than the local rates, Mr. Turney?

Mr. TURNEY. No; they are not; that is what I have been saying.

Commr. CASKIE. Now, I have a tariff here before me, and it says "proportional rates." Now, aren't these proportional rates lower than the local rates of these carriers?

Mr. TURNEY. Mr. Commissioner, this rate is an average rate that applies on all LCL traffic. It is lower than the first-class rate and lower than second-class rate, but apparently higher than a fourth-class rate, and about the same as a third-class rate, and on the average is higher than the average rate of LCL traffic.

Commr. CASKIE. But isn't it confined to the first four
594 classes, generally speaking?

Mr. TURNEY. I didn't understand you.

Commr. CASKIE. Aren't the averages made up of the first four classes?

Mr. TURNEY. These averages here are made up of all the LCL traffic that these carriers have.

Commr. CASKIE. Yes; but not of the forwarders.

Mr. TURNEY. This is the traffic that these respondents handle for the forwarder at these rates.

Commr. CASKIE. Yes; which is principally up to fourth class traffic, first and fourth class?

Mr. TURNEY. Yes, sir; and that is all these respondents are handling. They don't handle any LCL in this territory at less than fourth class.

Commr. MEYER. I am not clear, Mr. Turney, whether the columns "Local Traffic" or "Forwarder Traffic" represent the averages of all those respective classes of traffic?

Mr. TURNEY. Yes, sir; LCL traffic only. Now, I haven't got time, because my time is about to get away from me, to do much more than to point out a study again that involves all of the revenues of these companies for the year. It is unchallenged on the record that the greatest detail was made by these compa-

nies of their revenues and expenses from this traffic, and
595 this shows what they got out of it. This is the proposed rate here; this is the cost, and you will observe that including the cost of the Chicago terminal, which is eliminated in this handling, but including all that cost, which is not out-of-pocket expense, this is every nickel we have spent, and the average cost of handling all LCL traffic, and you will see that the total of these carriers make a profit of 6.5 cents per 100 pounds on these rates. That is in the record; the greatest details are there; it wasn't challenged by a soul, and we say it must be observed by this Commission in its findings.

Now, as to the question of discrimination, I just want to take a moment there. No one claims discrimination except this—haven't time to read them, but if you will look at Volume 2 of the original brief, which is the abstract, you will find a list there of 15 or 20 of very prominent traffic managers of plants located in the small towns in Wisconsin and Indiana that are attempting to compete with Chicago and other large key points, who testified over and over again that the maintenance of this service and these rates were absolutely essential, if they were to continue to compete with those large packers: that it was absolutely impossible for them to get this service any other way, either by truck or by rail; and that is in the record. I say again that this Commission is primarily here to protect the interest of the shipping public, and these representatives of those men—they are paying the rail rate, or the equivalent of the rail rate, and they come in
596 here and say that this service is absolutely essential to them. Now, there isn't any discrimination either because under these tariffs anybody can use these rates. They are not restricted to forwarders. If a shipper now wants to use one of these rates to ship from or to Chicago, he can do so, and it is entirely possible that there will be a considerable amount of shippers who will ship into Chicago and there ship out at the forwarder's Chicago local rate. In other words, he will make it a combination movement; and if he does, he is entitled to this, and there will be plenty of them made. There is no discrimination of any sort in this case, although, if you please, Your Honors, under the Starin-New Haven case there might have been, because in the Starin-New Haven case the proportional rates were limited to movements into and out of New Haven by motor carriers. Here the rates are not limited to the forwarders, it can come in by any one, shipper or any one else.

Commr. CASKIE. Can I bring a truckload of my own freight into Chicago in my own truck and use these proportional rates outbound?

Mr. TURNEY. You cannot, and you couldn't do that in the Starin-New Haven with your own boat either, or with your truck.

Commr. CASKIE. Are you sure of that?

Mr. TURNEY. Yes, sir; because I have read the tariff, and
597 it is in the record here, and it is also in the decision, as I recall it.

Now, I haven't time to discuss at any great length the all-commodity rates. As I said, these tariffs have nothing whatever to do with the issue or the propriety of carload all-commodity rates. The only thing in which it might affect it at all are the facts that this rate is published upon all four classes of freight with certain notable exceptions. If you will examine the tariff, you will find that there is a large number of items which take rates as high as five times the amount of these rates because they are lighter bulk.

Now, in other words, there is a sort of a little classification attached to it to protect the respondents against light and bulky traffic, or high value traffic, but there are many advantages to the respondents in handling it at an average rate rather than as a percentage of the classification.

In the first place, the record shows that compared with the division which the respondents receive from other motor carriers on light freight, in all cases except only in the case of first class, these rates are far in excess of the amount which they receive from their connecting carrier, and that in many cases it is equal to the first class division. But by publishing the rate in this fashion they avoid an exceedingly complex classification problem,
because the forwarder traffic moves at the rail classification,
598 the truck traffic moves at the truck classification; there are many differences. It would mean that the respondents would have to rerate and reclassify all of these shipments differently from the manner in which they are classified on the forwarder's billing. That is the first difficulty.

In the second place, it saves the respondent because of that clerical expense. It saves him a considerable amount in making his tariffs and in making his changes, he doesn't have to change his tariffs every time there is a change in one of these rates or a classification, and it eliminates practically billing upon his part. From every standpoint this method of rate making is more economical, and it is proper, too, because as a matter of fact all these hauls are within 50 or 60 miles; they are all short hauls; they are really a pick-up and delivery to a rail haul, and that is all they amount to; it is the concentration and delivery; it is true coordination, using the truck for distances where every one concedes it is supreme, and the rail for the long hauls.

Now, I have mentioned the special service, and I won't stop to go over that, but I just want to point out this at the end. As shown here, the respondents make a profit on these shipments for a haul of 50 or 60 miles, which on the average is over 6 cents. Now, here, the forwarders made an analysis of this business to determine whether or not it was profitable for them
599 to absorb any higher rate than that proposed here, and this involved every shipment which moved on a given date, and it shows that on two of the territories they actually lost money. This is the rate which they charged, which is a rail rate; this is the amount that they paid the other transportation companies.

Commr. AITCHISON. You had better identify, for the sake of the record, what you are talking about. You are speaking of "this" all the time, and it won't show in the transcript.

Mr. TURNEY. Well, the first class of this Chart No. 4——

Commr. AITCHISON. Is that an exhibit in the case?

Mr. TURNEY. Yes, sir.

Commr. AITCHISON. What is its number?

Mr. TURNEY. No. 9.

(Discussion off the record.)

Mr. TURNEY. All these charts were taken from exhibits in the case. In the first line is the rate charged by the forwarder which is identical with the rail rate. The second line is the amount paid the transportation companies; the third is the amount paid at these rates to the respondents. The fourth line is the forwarder's cost, the station cost, of pick-up and delivery, billing, claims, and these other trucks, and the total cost, it will be seen, is in next to the last line. Now, the last line shows that the average of the four territories involved the forwarder takes
1 cent as against 6.5 cents made by these respondents, and
600 on two of the territories that are actually losing money; that because of the larger volume that moves through the Chicago metropolitan area it makes sufficient money there to offset the losses of these two. Of course, it has another advantage in handling this traffic, in that it enables it to give more regular service by having this additional tonnage to put in its cars.

Commr. ROGERS. I wonder if you would deal with this 48-hour allowed at the forwarding point where the shipment is made by the forwarder, whether in the absence of the transfer of it, authorizing this delay, movement to and from the forwarding point could be considered as a through movement?

Mr. TURNEY. Mr. Commissioner, again I say that it doesn't make any difference what you call it, whether you call it concentration, whether you call it transit, or anything else, the fact

is that there are many many cases where you permit proportional rates with delays of 48 days or 48 months compared with one of 48 hours. That 48 hours is the maximum time to make. The tariff reads, as I recall, I think it is immediately and within a maximum of 48 hours.

Commr. ROGERS. But in those places where there are 48 days or 48 months, isn't there some other tariff provision taking care of that, that you don't have in this?

Mr. TURNEY. I don't know of any different provision, Mr. Commissioner, than the one that states the length of time it may remain there. For instance, your cotton concentration.

601 the cotton does nothing but lay in the factory's warehouse or in the compress.

Commr. ROGERS. Isn't there a tariff provision that allows you to leave it for 48 hours?

Mr. TURNEY. There is a tariff provision in use that allows it to lay for 48 hours, the very provision which you quote.

Now, just one minute more. The record shows that at Chicago alone motor carriers received during the last year for this short haul $1,750,000 per year in freight charges from this forwarder traffic. It also shows beyond the peradventure of a doubt that if they are denied the right to publish these rates and protect the tariff which they have built up over a long period of time by rendering a service which nobody has ever rendered or can render except these respondents, then you are going to take that much money away from them, and you are going to wreck, and I say that deliberately because the record shows that you are going to throw into bankruptcy several of these respondents.

Commr. CASKIE. Well, suppose the Commission approves of these rates, do you know of any reason why the railroads shouldn't be allowed to put in similar rates?

Mr. TURNEY. Not at all. They have done it in Texas. They can't give the service here, but if they can there is no reason in the world why they shouldn't do it, and there is every reason why they should.

I wish to reserve the remainder of my time for Mr. Quirk.

602 Commr. CASKIE. All right, Mr. Turney.

Mr. Cotterill?

Argument of Mr. C. E. Cotterill

Mr. COTTERILL. If Your Honors please, the Middle Atlantic States Motor Carrier Conference, Incorporated, sought permission to participate in this argument. The questions are deep and very important. We have taken the occasion before to say,

and take this occasion again to repeat, we deem this Commission has no greater responsibility than that which attaches to the need under existing law, if possible, under new laws if necessary, to find the formula for composing these competitive transportation controversies. Our country, so far as transportation is concerned, is fast slipping; until some agency such as this, and preferably this, exerts its existing authority to the absolute need, and then if need be found for further law, let's have it. This is essentially a competitive struggle. Legally, the question seems to be: (1) May a special rate be applied by a motor carrier less than its local on domestic traffic having a true origin or destination beyond when the antecedent or subsequent haulage is in the name of an unregulated transportation agency by land.

Commr. EASTMAN. Mr. Cotterill, do you regard this as a competitive question here in this case?

Mr. COTTERILL. Oh, yes.

Commr. EASTMAN. Well, where are the competitors? Why didn't they come into the case if they objected to what is being done?

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Mr. COTTERILL. I don't know, Your Honor, except as to my people. We are finding it increasingly difficult, until these cases reach the stage of argument, to go into each case as it arises in the trial throughout the country, where our interest is not so needed in the particular rate but only in the principle involved because of its threatened extension to our territory.

Commr. EASTMAN. Well, but the immediate competitors here, if there were any, would be the truckers in the Central States, would they not?

Mr. COTTERILL. Oh, no; this precipitates, of course, the likelihood——

Commr. EASTMAN (interposing). I said the immediate.

Mr. COTTERILL. Yes.

Commr. EASTMAN. That would be true?

Mr. COTTERILL. Yes. Now, you are inquiring why more motor carriers up there didn't go into the case, for instance?

Commr. EASTMAN. Yes.

Mr. COTTERILL. I wish that I could answer definitely, but I apprehend, Your Honor, that most motor carriers are reluctant to find themselves in direct opposition to the forwarding companies because they are potential customers.

Commr. EASTMAN. Is that true of the long-haul motor carriers?

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Mr. COTTERILL. To a considerable extent, yes; carriers which are in fact long-haul, though their patronage from the carloading companies might be short-haul, say within 100 miles, and it is a delicate thing to quarrel with your customers in that

way. I imagine that was an influence, but that in itself is not controlling, Your Honor, because I meant that our people were apprehensive about is this: we are concerned about the all-commodity aspect of this matter primarily in its threatened extension throughout the motor carrier industry when we are at this time most diligently seeking in every way we can to eliminate it from the railroad setup, and obviously if this all-commodity scheme of proportional rate be lawful in one section it is lawful in another, and the first thing we know we are absolutely strapped by classification in this country, because if it is lawful for the trucks it is lawful for the rails, and we go right around in a circle in their reargument. May I say in that connection, obviously since the forwarding company business is primarily fourth class and higher, it is a delusion, I think, to speak in terms of an average rate equaling about third class, because, plainly, no shipper in his senses is going to use such a rate when it makes higher than the local rate would be; therefore, it follows that the only use for such a rate is where it cuts what otherwise would be the local rate, and as that cut would naturally attach to forwarding business which is usually fourth class, or higher, we don't see the use of any argument comparing it with an average of third class.

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Commr. AITCHISON. I don't find any brief from you here.

Mr. COTTERILL. No, Your Honor.

Commr. AITCHISON. And I don't find your name on the appearances. Whom do you represent?

Mr. COTTERILL. The Middle Atlantic States Motor Carriers Conference. I apologize, sir. These things have had to be brought out behind the scenes in meetings of boards of directors, and I think it was only seven days that a majority board of the Middle Atlantic resolved to seek authority to come into the argument of this case.

Commr. AITCHISON. Well, on what side are you?

Mr. COTTERILL. We are in opposition to this particular tariff particularly because of its all-commodity feature. I realize, Your Honor, that is not good procedure. I hope the Middle Atlantic Conference will not risk that admonition from the bench again.

Commr. AITCHISON. I haven't made any admonition. I was just trying to find out where you are, who you are.

Mr. COTTERILL. Yes, Your Honor. Now, I stated what seemed to be the first legal question. The second seems to be, may such a so-called proportional rate be determined lawfully, if in practical effect and intent its usability be confined to large shippers, including the so-called forwarding companies

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which are, in law, shippers, and in any event is it lawful to make such a tariff in the form of an all-commodity rate, the appeal of which inherently is to forwarding companies.

The fundamental legal question suggested by all those three seems finally to turn on a doctrine that apparently was settled for this Commission by the Supreme Court just a few weeks ago. In its decision in the so-called Warehouse Case in New York, upholding this Commission's findings and orders, the Court stated that there may be such a thing, and in that case it was found to be such a thing, as an unlawful rate though published in a tariff, when its effect be confined to, in practical terms, large shippers. Now, treating the forwarding companies as large shippers, is not an all-commodity rate of this tariff designed especially for an appeal to that business of forwarding companies under an all commodity rate plainly on its face in violation of that part of the statute which seeks to avoid discrimination by shippers in the use of a rate though in form it might seem to be available to any of them.

Commr. EASTMAN. You think this may result in entering some small shippers in favor of the large shipper, is that right?

Mr. COTTERILL. Why, I should say yes.

Commr. EASTMAN. Well, are there any shippers here who are complaining?

607 Mr. COTTERILL. I cannot answer that, sir; I doubt it.

Mr. QUIRK. There aren't any.

Mr. COTTERILL. They are coming up very fast. I don't think there were any small shippers complaining in the Warehouse Case. As I recall it, I was counsel in there; I don't remember any shipper complaining about the very cheap or free storage that New York Railroads were granting under a storage and transit tariff, but Your Honors condemned that tariff as illegal because——

Commr. AITCHISON (interposing). Isn't this a case where we represent the public?

Mr. COTTERILL. I think so; yes, sir.

Now, addressing myself, as I said, primarily to the all-commodity feature of the case, we think that that question opens up some very broad considerations. You have in your northern territory a railroad rate level which on semifinished and finished manufactured goods is approximately 40 percent less than in the South, and even a greater amount less than in the West. The carriers by rail in that northern territory are desperate, and yet at the same time we find that due to the complications which have arisen in respect to forwarding company business, the competition in the northern territory is no longer confined to that between rail and trucks; it now embraces a burning and intensified competition be-

tween the rails themselves to their injury and to that of the trucks.

608 I have in mind, Your Honors, it will be recalled that, when the Pennsylvania Railroad, by virtue of the power which it had, forced upon this country the absorption of pickup and delivery expense under then existing LCL rates over the protest of the trucking industry, that that added absorption of many million dollars of added expense was not warranted under the then existing rates. The real reason for that effort of the Pennsylvania was solely to put itself in a better competitive position with the New York Central and the other railroad interests said to be in control of forwarding companies.

Commr. EASTMAN. Mr. Cotterill, do you suggest that the rates on this character of traffic are very much lower in Official Territory than they are in Southern and Western Territories, and for that reason the carriers in Official Territory are desperate?

Mr. COTTERILL. No; I do not suggest that. I don't want to argue those other cases in which I am no longer counsel. I do make the point, Your Honor, that dealing as you now are with a rate level in Northern Territory which today is so much less than elsewhere in the country, it would seem to suggest the utmost exertion on your part to prevent any step being taken that would further crumble it or disintegrate it.

Commr. EASTMAN. But isn't it true that the carriers in these other territories where you say the rates are so much higher, are equally as desperate?

609 Mr. COTTERILL. I think they must be nearly so; yes.

Commr. EASTMAN. Well, aren't they more so?

Mr. COTTERILL. I have not been keeping abreast as much as I used to, Your Honor.

Commr. AITCHISON. Are you an expert along those lines?

Mr. COTTERILL. No, sir; I am not an expert on any line.

Commr. MEYER. This is so different from 40 percent as in the allegation of protestants——

Mr. COTTERILL. Why, Your Honor, I think that is a sort of a mathematical matter. The first-class rates, taking the first six classes in the respective territories in the United States, reveal on their face that much of a difference; that was all that I had reference to, namely, that the Western merchandise rates and the Southern merchandise rates were at least 40 or a higher percentage than in the north, and I am merely urging here that with the seat of your national transportation problems centered so largely in the North where you have those big carriers, surely there is the territory in which double zeal should be displayed in preventing anything that would tend further to drag it down; so until compara-

tively recent times the perfectly legitimate function of the carloading or forwarding companies was to determine those communities between which they might serve as an agency for shippers in consolidating small shipments into railroad carload lots, paying to the railroads the railroad tariff carload rates, and the
610 spread between those railroad carload rates and the rail less than carload rates afforded the carloading companies a legitimate profit after deducting their own expenses; and it so happened that as a result of that system, instituted many years ago, their field of operation, generally speaking, embraced hauls 350 or more miles.

A part of this competitive strain that has now developed in this country has taken the form of the institution of all commodity rates either with or without minimum or maximum, and invariably have applied to the upper classes of traffic, marking great reductions in what otherwise would be the normal rates. Now, the intent behind that invariably is to compete for the business of the forwarding companies as shippers. We now find the trucking industry at the threshold of being a party to that struggle for the forwarding company business in the form of these all-commodity rates.

We are not now speaking of the legality of a proportional rate as such on a classification basis available to the whole shipping public in practical use. That goes to other questions with which we are not at this time ourselves taking any concern. We are concerned here with the suggested introduction of what is deemed by us to be a quite vicious scheme of rate making, according to which there is but a thinly disguised cutting of prices by one transportation agency in order to get the business of a very
611 desirable and important shipper customer, namely, the forwa'ding companies.

I remarked about the matter of the absorption of those many millions of dollars of added expense by railways as a part of the truggle for the carloading business. Surely it is known enough in general to find no basis for criticism when I say that public announcement has been made that still being dissatisfied the Pennsylvania Railroad is on the point of filing with this Commission a set of new tariffs breaking the line-haul rates themselves because of the competition between the Pennsylvania and railroads said to be in control of the forwarding companies. This thing has got to stop. Your Honors, or else will all shippers go down to the pit.

We do not think it is proper for the trucking industry to borrow this bad practice from the railroads. We have introduced into the scheme of economics of this country 75 years ago the principle

of classification of rates, according to which there is a distribution of the traffic burden with regard to the public interest of making that traffic which can better afford to pay it, pay the larger share of the burden than that which can least afford to pay it, and industry has located itself throughout this country with reference to that principle. Break it down and you remake our industrial map in this country.

Now, the forwarding companies themselves charge the shipper in accordance with a classification. If they themselves in their dealings with the shippers are going to apply their own
612 classification, which corresponds to the rail classification, why should it be of consequence to the motor carrier industry to relieve the forwarders of the supposed clerical expense of billing their freight by description; that is to say, if a forwarding company is to use a proportional rate of a motor carrier, and in that respect serving as a shipper, why should that shipper be relieved of the ordinary burden attaching to the shipment of freight in this country, namely, to describe your freight when you give it to the carrier, and pay the rate in accordance with its description? The forwarding company is going to do that with its own customer, namely, the true owner of the goods. It is going to apply its class rate. Then why should the motor carrier be put in the position of relieving the forwarding companies of that further expense of describing their shipment when they take out a truck bill of lading?

This Commission has the express power and duty to prescribe a just and reasonable classification. Now, I grant there is force in the technical aspect of Mr. Turney's legal argument that you are in substance prescribing a classification if you have but two rates. I grant you that is a species of classification, but we think that when Congress said that there shall be a classification of rate, it did not contemplate that the exercise of that power would take the form of reducing everything to one class except a handful of so-called light and bulky articles.

613 Commr. EASTMAN. Where is that provision that requires the classification?

Mr. COTTERILL. In respect to the rails it will be remembered that that is in——

Commr. AITCHISON (interposing). Section 1, paragraph (c)——

Mr. COTTERILL. Yes. And in respect to the motor carriers it is the corresponding provision. I think the language is practically the same, Your Honor.

Commr. AITCHISON. Section 216, Paragraph (b).

Mr. COTTERILL. Yes. It is a part of the rate making section, the statute.

Now, it seems to us, Your Honors, appropriate therefore in this case to look forward a little——

Commr. ROGERS (interposing). Taking your own territory, you, of course, know we have a proceeding there to establish minimum rates to common carriers.

Mr. COTTERILL. Yes, sir.

Commr. ROGERS. If we should put in a minimum rate order similar to that put in in the Central Territory and make obligatory those rates, how would that affect a tariff of this sort, if at all, in the Middle Atlantic territory?

Mr. COTTERILL. Unless Your Honors, in your opinion, in the Ex Parte MC-20 case were to say otherwise, then the way the
614 record in that case stands is such that you are not called upon there to approve or disapprove proportional rates except two or three that were in that record. Now, on the other hand, if by failing to say otherwise you prescribe a basic rate level that would by its own force appear to prevent proportional rates of this kind being established in that territory, so far as its own force is concerned, but it would seem to be clear that if in the decision of this pending case Your Honors were to approve as legal these all-commodity proportional rates, it would be very difficult for you to deny to trucking interests in the East that might be tempted to try the same thing by competitive pressure—it would be difficult for you to deny them the right to do likewise.

Commr. ROGERS. This may be an unfair question, because you may not be familiar with the other case, but in the Central Freight Territory we have now in effect a minimum rate order.

Mr. COTTERILL. Yes, sir.

Commr. ROGERS. How does this old tariff compare to that?

Mr. COTTERILL. If the territory involved covers the area of application of this proportional rate——

Commr. ROGERS (interposing). I don't believe it does.

Mr. COTTERILL. Well then, it would not be affected by the outstanding minimum rate order.

Commr. ROGERS. Suppose the forwarders and motor carriers establish what they are proposing to do under this tariff at points down in Central Territory, where this minimum rate order is in effect?

615 Mr. COTTERILL. I would say they could not lawfully do so without a modification of the outstanding minimum rate order.

Commr. EASTMAN. And isn't there something there excluding proportional rates? Those minimum rates are described as local rates, are they not?

Mr. COTTERILL. I think not, Your Honor. I know we have groped around with the problem in the Eastern Case, and our conclusion there is that except as specifically proposed in the Eastern Case, you have before you no proportional rates, and any minimum order you make there would be a bar against their establishment unless you modified the order.

Now, it is important to emphasize we are not denouncing the forwarding companies. We feel that they have had a legitimate place in the scheme of things for many years as shippers. As shippers they have a perfect right to function and to use whatever figures are available in a published tariff to any other shipper. There is no apparent law that even hints to the contrary, but this competitive struggle which has arisen lately seemingly always take the form of some attempt to establish a special rate, restricted in its application to the business of forwarding companies.

Now, if we had none but Acme, none but National, none but the Universal to deal with, it is imagined that much of this competitive strain would not exist, but, Your Honors, scarcely a day goes
616 by that we do not hear of the creation of another forwarding company. They are growing like mushrooms. If you were to remember the way that trucking companies were growing prior to regulation in number—I daresay the forwarders will ever equal them in number, but we simply cannot keep abreast of the daily announcement of the formation of some new forwarding company whose only possible basis for existence is artificial creation by reason of these discriminatory rates. If they were truly available to all shippers in a practical sense the shippers would use them direct without the intervention of a forwarding company.

Mr. TURNEY. Mr. Cotterill, have you read the record in this c[illegible]

Mr. COTTERILL. Why, I have read such parts of it as are referred to in the brief; yes, sir.

Mr. TURNEY. Did you read the record of the shippers?

Mr. COTTERILL. I read whatever is referred to in the brief; yes, sir.

Mr. TURNEY. Would you make that statement then?

Mr. COTTERILL. What statement? About the creation of new forwarding companies?

Mr. TURNEY. No; the statement that this business could only be handled because of discriminatory rates.

Mr. COTTERILL. Yes; I make the statement, Your Honors, that any rate truly available to a shipper in the true sense of the term, in a practical day in and day out course of busi-
617 ness, would be used by that shipper direct without the intervention of a forwarder; and it is only because in the prac-

tical course of business that there is something that gives the forwarder an edge that can make his service attractive to the shipper; and so when we look to this rate, on its face it would seem to be available to a shipper in New York that went to a railroad and took a railroad bill of lading to Chicago in his own name as a railroad, and then within 48 hours he goes to the trucker and he says, "Mr. Trucker, I want you to take that on to Green Bay, Wisconsin, for me under your proportional rate." Now, on its face that can be done. But how would that freight get from the railroad in Chicago to the truck's terminal in Chicago? By the payment of an extra city haulage charge across the city which the shipper would never pay. It is only because the forwarding company provides for its own delivery at the truck terminal in Chicago that the shipper would be relieved of that particular expense.

Now, I am speaking less in opposition to the principles, because I am not here charged with that duty. I am speaking less with regard to the principle involved than to the form of this particular arrangement. This all-commodity feature, if introduced into this trucking business, simply means another cycle of rate war all the way around. We are trying to eliminate it today from the rail-
road situation, whereas formerly these larger forwarding
618 companies were exclusively customers of the trucks; the inclusion of these all-commodity rates are now making them competitors of the trucks, not only the larger ones but a host of the smaller ones. And unless we stop it will soon turn out to be the case in this country that as to merchandise traffic the shipper will sell and be dealing with the true agency of transportation, and you will have not true price regulation as to the actual price being paid by the shipper.

We submit, Your Honors, that the case before you should be viewed from the two fundamental aspects; halt at the threshold whatever you may find in this likely to accelerate the already difficult condition caused by the existence of these all-commodity rates of rails, and others, and secondly, find with us that if there be a legal basis for a truck proportional rate of the kind sought to be established in this case, eliminate from it the all-commodity feature at least.

Commr. AITCHISON. Well now, suppose you were writing the report for us, as sometimes we ask parties to make suggestions as to what we ought to apply, Mr. Turney said he can't find anything illegal about this. What do you think?

Mr. COTTERILL. If you are addressing me now, as I think Your Honor is, as a lawyer alone—not speaking now for clients because I have that permission—speaking as a lawyer, we think, first, this

tariff should be rejected as such on the somewhat limited
619 ground, first, that its availability as so worded is limited to certain large shippers. In that sense, speaking as you would for the public as you did in the Warehouse case, you find that this inherently provides a discrimination without settling with finality the question whether or not a trucking company may lawfully file a proportional rate of a proper kind. I wish it were possible to suggest that this case could clean up the whole case, but seemingly it won't, unless you want to take the responsibility of predicting for all these competing agencies what they ought to do. We do feel in this particular form of tariff there has been engendered that kind of an unlawful discrimination which must fall. As to the measure of the rate, I can't speak with much intelligence on the subject, except to say on its face it would seem that as applied to the only transit that ever would move under the rate, it involves a revenue reduction of around 40 some percent. That may well raise a question whether or not it can ever be lawful for a transportation agency to make a reduction of 40 percent in its rate and still be within the bounds of lawfulness, unless you are again going to apply to the trucking industry what we hope you will never do, namely, the theory of out-of-pocket extra cost. Now, if it be possible to make some concession in the form of a lawful proportional rate incident to forwarding company business, we wonder if it takes a 45 percent or 50 percent price concession for that purpose.

Commr. AITCHISON. Well, there can't be anything particular about giving percent that stamps out that reduction is
620 unlawful, can there?

Mr. COTTERILL. I think not, Your Honor, except that on its face, if you start with the assumption that a proper operating ratio of a trucking company, taking all of its traffic, would be about 85 percent. You start with that as an assumption, you haven't the margin available on which to make a 40-percent reduction on anything, unless you apply the extra out-of-pocket cost theory.

Commr. EASTMAN. You find these unlawful under Section 3?

Mr. COTTERILL. Yes, sir.

Commr. EASTMAN. Well now, I haven't agreed with the doctrine, but isn't it true that the Commission has held many times that it will not find a violation of Section 3 without proof on the record of actual damage?

Mr. COTTERILL. Your Honor, yes, sir; it is, and I have noted that the Supreme Court seemingly has not held you to that requirement. For instance, in the matter of the decision of the Private Passenger Car case, the case that had to deal with off-line use of so-called private cars of company officials. The rereading of the

Supreme Court's decision in that case will tell you that there without any suggested showing of injury to anybody it was held to be unlawful and in violation of Section 3, and as to——

Commr. ROGERS (interposing). In that case we were just deciding a question of law.

Mr. COTTERILL. Yes. And in the Warehouse case, I don't recall any evidence that established a discrimination in fact.

Commr. EASTMAN. It is true, isn't it, that so far as this record is concerned, that there is not only no proof of damage but there is no claim of damage on the part of anybody?

Mr. COTTERILL. I rather think that is the case, Your Honor.

Commr. CASKIE. Your time has expired, Mr. Cotterill.

Mr. COTTERILL. Yes; thank you.

Commr. CASKIE. Mr. Born?

Oral argument of Mr. Ferdinand Born

Mr. BORN. If the Commission please, I appear here representing the Indiana Motor Carriers, respondents in the instant proceeding, and also the Intervenor, Central States Motor Freight Bureau, Incorporated. In addition to the Central States Motor Freight Bureau, Incorporated, there are additional intervenors located not only in Central Territory but as far west as the Pacific Coast and as far east as the Atlantic Ocean, who have asked me to say that they are in support of the position as taken by respondents, not as to the rate but as to the principle of publishing proportional rates.

I believe the Central States Motor Freight Bureau, Incorporated is so well known and recognized in its functioning, that time will not be taken in description of it, for the Commission in Motor Carrier Rates in Central Territory, Ex Parte No. MC-21, 8 M. C. C. 233, has made exhaustive reference to its activities.

Commr. AITCHISON. That was Division 5, wasn't it?

Mr. BORN. Yes, sir.

Commr. AITCHISON. The rest of us have been kept out of the room on that sort of thing. You might tell us a little something about it.

Mr. BORN. I will, Your Honor. I was just coming to that.

However, briefly stated, its membership consists of approximately 750 common carriers operating throughout Central Territory by motor vehicles, and it renders service to 550 additional carriers in the publication of tariffs. So that you have before you, when I speak of Central States Motor Freight Bureau, Incorporated, a representative of 1,300 motor carriers operating in Central Territory, and I do submit that that is representative.

Commr. AITCHISON. Common carriers or contract?

Mr. BORN. Common carriers, Your Honor.

Commr. ROGERS. Didn't Mr. Moore testify in Ex Parte 123?

Mr. BORN. I believe he did.

Commr. EASTMAN. Now, that case that you spoke of, about the rates in Central Territory, wasn't that considered by the Commission on petition for rehearing?

Mr. BORN. I think it was Your Honor. In fact, I am sure it was.

623 Now, with respect to the Central States Motor Freight Bureau, so that there will be no misunderstanding, as a Bureau it takes no position and expresses no judgment as to the level of rates in the suspended territory. It maintains, however, that the motor operators constituting its membership have the right to publish and maintain tariffs of the type here under discussion for the protection of mutual business handled by themselves in gathering and distributing service, whether such traffic is received from or delivered to either freight forwarders or interline connections.

Division 5 seemingly has not considered the tariff that is truly involved. The tariffs are published as agency issues by the Central States and the participating carriers are motor carriers operating within the territory. Complete control over these tariffs is held not by any shipper, whether it be a freight forwarder or any other form of shipper status, but is controlled completely by the motor carriers. The carrier participants, if dissatisfied with the rate, can withdraw from the tariff, or accept the alternative of directing the publishing agent to increase the rates.

It is well settled and stated in United States v. Illinois C. R. Co., 263 U. S. 515, at page 522, and cases cited, that a carrier is entitled to initiate rate, and, in this connection, to adopt such policy of rate making as to it seems wise. Here we have a proposition backed unanimously by what might be termed the entire motor industry.

624 Commr. ROGERS. Could you do this same sort of thing down in Central Territory where the minimum rate order has been effected?

Mr. BORN. I see no reason why you could not, Your Honor, because by the use of the proportional rates it would increase the rates within Central Territory, that is, using as an example the rate from Anderson, Indiana to the concentration point it would be paid a proportional rate, and the additional rate to any point in Central Territory I am sure would throw it over the minimum rate order. And I also understand that in the New England case the question of proportional rates were there

presented, and it was found that the minimum rate order did not cover proportional rates.

Commr. ROGERS. And they were accepted in the order?

Mr. BORN. That is my understanding.

Commr. CASKIE. Mr. Born, does this tariff apply in connection with less than truckload rates of motor carriers on file with the Interstate Commerce Commission, in-bound to Chicago, less than carload—less truckload rates?

Mr. BORN. It does not.

Commr. CASKIE. In other words, if I give a shipment to a common carrier by truck, a member of your Bureau, at some point east of Chicago; and I want to use these proportional rates beyond Chicago to a point in Wisconsin, I can't do it?

Mr. BORN. No.

Commr. AITCHISON. I was left somewhat in the dark as to whether or not your members do actually perform forwarder service as well as common carrier service.

Mr. BORN. A great portion of them do; some do not handle any forwarder service at all. I would say that every member—

Commr. EASTMAN (interposing). You mean that they haul traffic for forwarding companies. I thought the Commissioner's question was whether they were actually operated as forwarders themselves.

Commr. AITCHISON. That is what I meant.

Mr. BORN. No; none of our members are forwarders. And I might say that every participant in the tariffs under suspension are members of Central States.

The record shows that the rates here under suspension are in volume reductions. And the record also indicates that each and every one of these rates as published are no lower, and when published were no lower, than the division the carrier received and had received for about 10 years' time, and has only to be carried forward in the way of a carrier publication.

Commr. EASTMAN. Division of whom?

Mr. BORN. With the freight forwarder or with any common carrier to which it has transferred shipments.

Commr. ROGERS. What made it necessary now that you change the matter?

Mr. BORN. The change could be brought about by any number of reasons. One was a simplification of accounting as to a division process; the other is possibly brought out as fear that the Commission should decide that all freight forwarders are shippers, which I believe they have done in the Acme case, and if that is true the divisions that we have on file with this Commission with the carriers go out the window because

the tariffs are something which will no longer exist. That is my view, alone perhaps, on this matter.

I have mentioned that these rates as published are in the form of reductions, and I say that Division 5 has erroneously shifted the burden of proof upon respondents, which is inconsistent with the law as laid down in the Anchor Coal Company v. United States, 25 Fed. (2nd) 462, and in United States v. C. M. & St. P. & P. R. Co., 294 U. S. 499. The rates, I further maintain, are backed up by definite proof that they are more than out-of-pocket rates. They are remunerating rates and are rates which the carriers have been able to progress and grow upon for a great many years.

Perhaps the Commission in its capacity as guardian of the public interest unduly weighted the protective hand, for the shipping public in great numbers took the stand and testified to the need for the sanctioning of the rates here involved. The shipping public stated that if the forwarder service were not available at off-route points, and that is what is involved
627 in this hearing, there would unquestionably result the loss of the business from the trucks to the rail carriers. This loss of business, it is indicated, will not only have a serious effect upon the financial structure of the carrier, but because of the fact that it will necessitate retiring of trucks from service, there will eventuate the severe impairment, retarding, and slowing down of the local service, which to me, I believe, is most important, and that is of record.

Commr. LEE. You just said that a great number of the shipping public appeared in support of this charge. What was that great number? Do you remember?

Mr. BORN. Approximately 15 of the largest shippers of outlying points in the States of Indiana and Wisconsin. I mention as one Delco-Remy of Anderson, Indiana, and another, Columbus Motors, of Columbus, Indiana.

Commr. LEE. "There was a great number," is the thing that impressed me.

Mr. BORN. On the record, as made, the finding cannot be other than that the rates proposed will not result in any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or any particular description of traffic.

Commr. CASKIE. Just on that point. Could you tell us why this tariff was restricted so they would not apply in
628 connection with less than truckload rates into Chicago?

Mr. BORN. I was going to touch on that later to show perhaps a reason to get away from the matter that one of the protestants brings up that we do not want them as a level of an all-commodity rate.

Commr. CASKIE. Yes; but these so-called proportional rates pply only in connection with truckload and carload rates into hicago.

Mr. BORN. Oh, no; they apply in connection with LCL into hicago, but only by those carriers which are participants of this ariff, would they get the advantage of the proportional rate.

Commr. CASKIE. Didn't you just tell me a few minutes ago hat these proportional rates would not apply in connection with TL truck rates into Chicago of the motor carriers?

Mr. BORN. If I answered in that manner I was mistaken, beause they do apply in connection with the carriers who are articipants in this tariff.

Commr. CASKIE. In-bound to Chicago?

Mr. BORN. In-bound to Chicago, but not for local—not local ervice, but when it is beyond Chicago, in truckload or carload y rail. I am sorry that I haven't cleared that up. I could tell at I had not.

Commr. EASTMAN. There is a little confusion between you and the Chairman as to what in-bound into Chicago means. He is thinking of it in one direction, and you are thinking of it in the other.

Mr. BORN. I was taking a point from Wisconsin into Chicago, nd then outbound.

Commr. CASKIE. Take one from Chicago to a point in Wisonsin. You have got to have an in-bound shipment before these roportional rates will apply outbound, haven't you?

Mr. BORN. Absolutely.

Commr. CASKIE. Now, I asked you, why did you restrict the ariffs so they would not apply from Chicago to points in Wisonsin in connection with a less than truckload rate, on file with his Commission, into Chicago, applicable in connection with our own towns, if it is in fact a true proportional less than ruckload rate.

Mr. BORN. There is a problem confronting every one there. he tariff as presented was presented in this form, believing that would fit the needs of the industry best. I can see no reason hy a proportional rate, or the proportional rate, should not pply on a shipment which moved——

Commr. EASTMAN (interposing). Well, Mr. Born, let me ask ou this: In connection with in-bound shipments, such as the hairman describes, of less than truckload quantities, haven't he carriers interested in this case joint rates with these incoming uck lines?

Mr. BORN. They have, Your Honor.

630 Commr. EASTMAN. And aren't the divisions of those joint rates less than these proportional rates?

Mr. BORN. Absolutely.

Commr. EASTMAN. And can they enter into joint rates with rail lines under the rail line policy?

Mr. BORN. Not under the rail line policy; no, sir.

Commr. EASTMAN. And have we any authority to compel the truck lines and the rail lines to join in joint rates?

Mr. BORN. I believe you do not.

Commr. AITCHISON. Well, if it were restricted to commodities which came in in either truckloads or carloads, you could make it also a shipload, couldn't you?

Mr. BORN. Yes, sir; but I do not believe the restriction is improper.

Now, as I stated before, there was no shipper appeared in objection to respondents' proposition or in support of any phantom protestant. The cases on this point are legion from out of which one citation should suffice. In Emergency Freight Charges in Indiana, 210 I. C. C. 541, the Commission in sustaining the action of the Public Service Commission of the State of Indiana, stated at page 543: "No shipper appeared and testified to any preference and prejudice as a result of the situation described," and further stated: "there is no evidence to
631 show that the action of the Indiana Commission has caused respondents any loss in revenue or intrastate commerce or has disadvantaged any interstate or intrastate shipper." And additionally at page 544, "However, no interstate shipper or locality appeared to urge that there was undue prejudice thereby."

Mr. Turney has touched quite largely upon the revenue, and mentioning only the Indiana carriers, the evidence of record shows that for the off-line business, that is, from the small towns to the concentration points, there will be a loss to the motor carriers of $187,000. Now $187,000 might not sound like a whole lot, but when you stack that up against the revenue of an Indiana carrier who operates in intrastate commerce, or between two points in the State of Indiana, such as Lafayette and Indianapolis, and one such carrier did appear, it does become a great figure, because the revenue of that one particular carrier, the Lafayette-Indianapolis Transit Company showed that for the year 1937 there was only $53,000 in revenue taken in by that line for the complete year.

Now Division 5 suggests that the publication of the rates as possibly not being true proportional rates, and while I, too, have no desire to quibble as to the sense of the name, it is pointed out that in Lake Cargo Coal Rates, 1925, 126 I. C. C. 309, the

rates there established were labelled—page 334—"in the nature of proportional rates." "In the nature of proportional rates," I believe is good enough for me.

632 Commr. CASKIE. In the nature of a proportion of what, that is the point. What sort of a rate?

Mr. BORN. The Commission said they were in the nature of a proportional rate because they were less than the local rate, and that was for shipment by water beyond the lake ports and not by any common carrier, whether it be by water, rail, or truck.

Commr. CASKIE. But in this case these common water carriers and railroads are subject to our Act and subject to regulation?

Mr. BORN. Absolutely, and I think they are glad that they are.

Prior transportation when in connection with unregulated water carriers has brought about the establishment of rates also in the nature of proportional rates, and I recall the Slider case—Slider v. B. & O. R. R. Co., 96 I. C. C. 65, American Rolling Mill Co, v. B. & O. R. R. Co., 173 I. C. C. 357, and I believe we are all familiar with the Holmes & Hallowell Company case, 69 I. C. C. 11.

Import and export rates largely are lower than domestic rates.

Concentration is applied on cotton, as to which from out of many cases I cite Cotton From and to Points in Southwest and Memphis, 208 I. C. C. 677. Quantities are moved in-bound without knowledge of the ultimate destination. I

633 believe that is an important point in this case—and the character of the shipment changed to that of carload out-bound.

Transit shipments are numerous and arrangements of great variety of commodities are accorded. I consider a transit rate or a reshipment rate in the same category as a proportional rate.

Grain is stored in elevators and reshipped at the through rate from point of origin to destination and the preservation of identity is not required. That, too, I believe, is most important.

Lumber falls in the same class.

The rates in question for application carry the provision that there must be reshipment within a specified period of time. Otherwise, they might be considered as all-commodity rates. The evidence of record indicates the wide application of all-commodity rates within the territory, in respect of which the Commission's attitude has been declared.

There was decided by the Commission, and I understand the cases have been reopened, the matter of all-commodity rates on commodities between Chicago, Illinois, and the Twin Cities, 226 I. C. C. 356, and also in all-freight from Chicago and St. Louis to Birmingham, 226 I. C. C. 455. There appears in such reports of the Commission certain matters which stultify any thought that

the rates could be used only by forwarders and possibly cer-
634 tain preferred shippers. The fact was developed from the evidence in the last named case, All Freight from Chicago and St. Louis to Birmingham, that possibly only certain large shippers could use the freight; that the Commission did not allow that to interfere with the ultimate finding where the rates were found by Division 4 as justified and the order of suspension vacated and the proceedings discontinued.

I would like to read briefly from this decision, because I do adopt the thought advanced there as my own.

"It is also contended that while the proposed all-freight commodity rates are available to the general public, they could be only used by a few large concerns, such as Sears, Roebuck & Company, or by carloading concerns, and that the smaller shipper could not use these rates on mixed freight, because the size of his business would not permit him to do so, but he would be required to pay the normal less than carload rate applicable on package freight, all this resulting in a violation of Section 2 of the Interstate Commerce Act."

The evidence does not support such a conclusion. We have frequently found that to constitute unjust discrimination within the purview of Section 2, that there must exist an exaction of different rates or charges from different shippers for like transportation services performed under substantially the same conditions and circumstances. See also United States v. Handley, 71 Fed. 672.

635 I have not the time to quote from All Freight Boston to East Hartford which appears in 223 I. C. C. 421, but there does appear at page 423 and 424 some very pertinent statements.

Now, Division 5 further indicates that there is a possible problem of policing the reshipments. For any carrier to violate the terms of the contract or the tariff is a criminal act, and that this in itself is a safeguard to the carrier. However, mechanics can be set up to further protect and police the situation, but the necessity is not pressing. In view of recent decisions, fresh from the press, in motor carrier rates in New England, Ex Parte No. MC-22, decided February 8, 1937, on Sheet 7 of the Mimeographed Report of Division 5, where as to a somewhat similar situation the following is stated:

"We do not believe that the rules should be condemned on the ground that there is a possibility that they might be abused. All rules providing for special services and all rates such as export, import, and proportional rates might be subjected to the same criticism, yet we have permitted their maintenance and they have been observed generally throughout."

On the point of proportional factors, the Commission has found specifically in Van Dusen Harrington Co. v. Director General, 78 I. C. C. 729, 731, that combination through rates composed of proportional factors, the use of which is dependent upon the use of the other factor or factors, did not invest them with the
636. character of joint through rates, and as stated in Zelnicker Car Works v. St. Louis S. F. Ry. Co., 179 I. C. C. 349, 350, it is not necessary for the tariff to make reference to through rates. Furthermore, it is entirely proper for the Commission to pass upon these proportional rates without consideration of other factors, and we refer to Atlantic Terra Cotta Co. v. Atlanta & W. P. R. Co., 151 I. C. C. 45, 52, wherein it was stated:

"In Cairo Board of Trade v. C. C. C. & St. L. Ry. Co., 46 I. C. C. 343, 350, we announced a principle, which has been consistently followed, that where a through rate is made up of separately established components we may pass upon the lawfulness of any one of the components independent of the other for the future."

I thank you.

Commr. CASKIE. Mr. Watkins.

Oral argument of Mr. Edgar Watkins, Jr.

Mr. WATKINS. May it please the Commission, my condition has kept me from reading the record in this case or from studying many of the decisions; therefore my argument will probably not be hampered by either the facts or the law, and I can discuss the case from the economic phases of it as I see it affects the people I represent.

I am representing here the Southern Motor Carriers Rate Bu-
reau which is similar to that represented by Mr. Born, but
637 of course nothing in the South reaches the size that it does in that territory, so we are much smaller than they are, but we are interested in staying in the transportation business to the same extent that the larger lines in CFA Territory are.

My position in this case is that these proposed rates are illegal. There has been discussed before this Commission these all-commodity rates in other cases that have been pending before you. I participated in the reopened argument in the three all-commodity cases which is still before this Commission undecided. Those are the cases which Mr. Born read from the decisions of the Divisions, but all of those cases are still under consideration here. Mr. Cotterill touched upon that phase of this case and I agree with the position which he has taken, and that is the same position that the entire trucking industry took in those cases where the railroads attempted to publish all-commodity rates,

and I believe that the entire trucking industry ought to take the same position here, because I don't see how you can take the position that all-commodity rates are illegal for rail application but are legal for motor carrier application.

Mr. Turney attempted, I think, to distinguish these rates that are under discussion here from the rail rates by saying that these were LTL rates, whereas the rail rates were car-
638 load all-commodity rates. I believe if you will refer to Section 2 of one of his tariffs, which is the one applying between Chicago and Wisconsin, you will find truckload proportional rates between Chicago and Milwaukee, and certainly I can see no distinction between those rates in that section and the all-commodity carload rates published by the rail carriers. If there is any distinction between the LTL all-commodity rates and the carload, I think that it makes the LTL rates that much worse, if it has any effect whatsoever, because I hope to show you how they will affect the competitive situation that now exists.

Mr. Turney mentioned a tariff published by our Bureau to give me something to discuss. I am not responsible for all tariffs published by that Bureau and I don't intend to defend all tariffs published by the Bureau. I might say that our Bureau has been consistent in opposing all-commodity rates published by anybody, and if such a rate got into our carrier it was probably to meet a competitive situation brought about by the publication of such rates by rail carriers, and we are still fighting that principle.

And also I might refer to some of Mr. Turney's clients' tariffs. In order to show how good the forwarding companies were he continually referred to the fact that they are LTL rates in Central Territory was the same as the rail less than carload rates. He has some tariffs on file with this Commission.
639 I doubt if they are legally here, although he contends they are, but nevertheless reading those tariffs will certainly show that as far as the territory I represent is concerned, his LTL rates by forwarders are far from being on the same level as the rail LCL rates or the motor carrier LTL rates, that they have between the key points in the South reduced their rates and have caused the motor carriers to have to make similar reductions in certain instances.

Now, one of the biggest arguments presented here is that if these rates are not allowed there will be millions of dollars lost to certain motor carriers. I question the accuracy of some of those figures, the largest of them, but let's assume that certain motor carriers would lose certain revenue but let's also in assuming

that, see what effect the other side would have on the trucking industry as a whole. I believe we should give that some consideration.

Mr. QUIRK. I don't see how the Commission can do that. Mr. Chairman, there is no evidence in here about what effect this rate would have on any other motor carriers.

Mr. WATKINS. I think that this Commission, particularly in view of Section 2 and 3 of the Motor Carrier Act, certainly is charged with the duty of looking into destructive competitive practices and keeping the motor carrier industry on a proper economic basis, and I think that they can give consideration, even if it must be by assumption.

Commr. EASTMAN. Don't you think if a competitor was
640 going to be destroyed, he would have showed up at the hearing?

Mr. WATKINS. I think maybe I can explain why he didn't, Mr. Eastman. There was an agreement reached between the motor carriers and the forwarding companies affecting the territory in which these rates have been published, by which agreement the forwarding companies stopped some of their bad practices.

Mr. TURNEY. Now, wait a minute. We object to that.

Commr. CASKIE. You will have to confine your remarks to the record.

Mr. WATKINS. I was just assuming the possibility of the reason that nobody was objecting. I can tell you definitely why the carriers themselves didn't object.

Commr. EASTMAN. Well, aside from any agreement, if there was anybody going to be destroyed, he probably would have tried to protect himself.

Mr. WATKINS. If he knew what was happening.

Commr. AITCHISON. Well now, this probably is in the record. If the motor industry is not going to get this million, or whatever it is, who is?

Mr. WATKINS. Do you mean by that if it is lost to the forwarding companies?

Commr. AITCHISON. Suppose we cancel this tariff and Mr. Turney's clients are out a million dollars, what is going to happen?

641 Mr. WATKINS. In our opinion either the existing motor carriers or the existing rail carriers will get the million dollars or more.

Mr. TURNEY. May I say there that the record shows that it won't move to these small towns; it will go to the larger competitors in the big cities; that is undisputed.

Mr. WATKINS. In connection with that statement just made by Mr. Tierney, I want to call your attention to the fact that in the South the forwarding company business is not as developed as it is in the other sections. There they do not have the coverage, the extent of coverage that they have in this Central Territory. They do not participate in the transportation of as large a number of commodities or as low class commodities in that territory, and the reason for it is that today the forwarding companies are paying the local rates out of distribution centers if they are moving it. I don't say that they are moving much, but I say when they are doing it they are paying the local rates, which proves to me that there is some transportation which the forwarding company can perform without getting these rate concessions.

Mr. QUIRK. I don't want to be annoying, but there is nothing in this record about what happens in the South in respect to this question. After all, counsel can't just testify here for the first time.

642 Commr. CASKIE. I am going to have to sustain the objection.

Mr. WATKINS. Mr. Chairman, I was only referring—which I think you would want to say then it doesn't exist in the South, but that it could exist in Utopia somewhere then. You might assume that the facts which I attribute to the South are only assumptions, and that they might exist anywhere, and that this case might result——

Commr. CASKIE (interposing). You have five minutes left.

Mr. WATKINS. The results of these rates, and they are definitely concession rates for a competitor, the forwarding company is, in a sense, a competitor of every truck line; they are customers of certain truck lines, but they are certainly competitors of the majority and the trucking industry as a whole, and here certain of the truck lines are giving concessions to a competitor to better allow them to compete with the trucking industry. If that is sound economic principles, I don't know what economic principles are.

We have an overcrowded field in transportation. We have got an excess supply of transportation facilities, both by rail and motor carrier, and here by giving concession to an unregulated competitor they are increasing the transportation facilities in an already overcrowded field.

643 There was a question here as to why no shippers complained. If you will refer to the record in I&S 4315, The All-Commodity Rates by Rail, you will find that there were a large number of shippers who objected to any and all commodity rates being proposed. Of course, it is understandable that in any

particular case involving another area that certain shippers might not appear, might not know of the existence of such case until after it came out in the form of a decision of the Division of the Commission.

Commr. EASTMAN. Well, they could ask for further hearing then, couldn't they?

Mr. WATKINS. I don't believe that a further hearing would have been proper by a party who was not actually in that area. Now, I would certainly like to see a general investigation of the relations of forwarding companies and motor carriers similar to what you had in relation to forwarding companies and rails, because I believe you will find that all of the illegal things that were going on between the rail carriers and the forwarding companies you would find equally as well going on between the forwarding companies and some of the motor carriers.

Commr. EASTMAN. I was just calling attention to your statement that the shippers may not have been there, although they would be hurt by this, because they didn't know about it. Well, after the decision came out, these shippers, if they were going to be hurt, would certainly be interested parties,
644 wouldn't they?

Mr. WATKINS. If they were going to be hurt directly.

Commr. EASTMAN. And they could petition for a rehearing?

Mr. WATKINS. There can be an indirect hurt to the shippers.

Commr. CASKIE. Wasn't the decision against the tariffs?

Mr. WATKINS. Sir?

Commr. CASKIE. Wasn't the decision of Division 5 against these tariffs?

Mr. WATKINS. The decision that came out was holding that the tariffs were illegal, and if that decision is upheld, of course no shipper would be hurt.

Commr. CASKIE. Why certainly.

Mr. QUIRK. The Examiner's decision was in favor of the tariffs which was also given wide publicity.

Mr. TURNEY. Mr. Watkins, will you permit one question about the practices in the South, and that is, isn't it true that a large number of the members of your Bureau now have practices and participate in a joint rate at divisions that are less than the local rates?

Mr. WATKINS. Some of the carriers, I wouldn't say a large number—some of our carriers have and do handle traffic for forwarding companies. The majority of our carriers, however, do not, and do not approve of what the small minority has been doing.

Commr. CASKIE. Under what section of the Act that we
645 administer can you continue to apply those tariffs?

Mr. WATKINS. Which tariffs?

Commr. CASKIE. The tariffs that you say you join into with the forwarding companies.

Mr. WATKINS. I didn't say we did; he said that. I don't believe you can administer those under any section of the Act. I believe today that any joint rates between motor carriers and forwarding companies are illegal. I don't think——

Commr. CASKIE (interposing). Have you so advised your clients?

Mr. WATKINS. Some of them, when I have been requested. I haven't done it generally; no, sir. When I have been asked my opinion, I have done it.

Commr. CASKIE. Your time is up.

Mr. Mathews?

Oral argument of Mr. Amos M. Mathews.

Mr. MATHEWS. May it please the Commission, the Class 1 Railroads operating in Western Trunk Line Territory, sometime ago requested the Law Department of the Western Association of Railway Executives to intervene in this proceeding. I say this not by way of apology or alibi for what I may know or may not know about this proceeding, but only to state the fact. The matter was being handled by Mr. Sharples of our staff, and two days ago he went to a hospital in Chicago with influenza, and yesterday the matter was handed to me;
646 therefore, I am in Mr. Watkins' position somewhat of being rather unfamiliar with the record.

What I want to say briefly, however, is that the rail carriers in question wish to have sustained the opinion of Division 5 for the reason they think Division 5 was correct in its position that these tariffs are not authorized by existing laws. There have been a number of arguments presented by the proponents of these tariffs why they should be allowed to remain in effect, the loss to the affected carriers in threatened bankruptcy, etc., but it seems to me that those are entirely subordinate to the question as to whether the tariffs are lawful tariffs; that is, the transportation situation is sufficiently complicated and difficult without—I can think of no better term—without going beyond the margin of the law, and if these tariffs should be legalized and authorized, it seems to me that the existing law, both as to rail carriers and as to motor carriers, is being stretched or extended beyond any possible limits, and that, while it may have, conceding, and I assume that the records shows what the proponents of this tariff claim it shows; assuming that that will—allowing these tariffs to become effective—will benefit a certain number of carriers, and assuming that annuling the tariff will result

in great detriment to a number of carriers, nevertheless I think a greater detriment to the transportation system of the company and the transportation crisis that we are now in, will
647 result from putting into effect in the transportation business something new, at least so far as a record tariff is concerned it is something new, and something upon which the gravest doubts exist as to its legality.

Now, it is possible that some phases of the law in question are not certain, that is, they may be somewhat clouded by doubt, but I want to touch briefly upon those and point out that as to the propositions of law, as to which there may be some question, if we resolve those questions in favor of the legality of the tariffs, the resolving of the doubts in that manner will lead to results as to which there is no question as to the illegality or absence of legal authority.

Now, I haven't time, and it is not necessary for me to summarize reasons stated by Division 5 why this tariff is not authorized by law, but I want to call particular attention to the proposition that has been touched upon here, perhaps more ably than I can, and the Chairman mentioned it in one question, I believe. These tariffs are called proportional rates. Now, they are not the proportion of anything except the rate fixed by shippers; that is, the proportional rate, it seems to me, would be a proportion of a rate charged by carriers, but this is a proportion only of a rate fixed by a shipper; that is, the eastern rail carriers bringing commodities into Chicago receive regular carload lot rates, so what is the proportional rate a proportion of?
648 It is simply a proportion of the forwarder's rate. Now, that is a shipper's rate and is not within the jurisdiction of this Commission.

Furthermore, it is a rather novel, to say the least, proposition; that is, when all of the facts in question are taken into consideration, and it emphasizes the fact further that this is a shipper's rate, that the shipper when he—that is, the forwarding company—when he originates the shipment he doesn't lose control of it there, he appears again on the scene through his agent at Chicago and takes possession, and he has 48 hours in which to do so, which indeed seems a rather long period of time, and he reships in less than carload lots to the ultimate destination. That kind of a break in the entire plan of transportation is, I do not believe, recognized or authorized in any other proportional rate transaction. In other words, it simply isn't through traffic. Now, what, however, do those practices lead to? Various arguments may be advanced in rebuttal to show my position is not well taken upon those points, but what does that eventually lead to? It leads just to this: in practical effect, as was decided by the Commission in

the Kansas City Southern Case just recently, the Commission cannot compel joint rail and truck rates, but if these tariffs become effective, the practical effect is to accomplish precisely
649 that, namely, a joint rail and truck rate which is the sum of the rail rate from the eastern points to Chicago and the truck rate from Chicago to the destinations. Now, it is very true, by entering into an intricate legal analysis of that relation it is demonstrated that that isn't a joint rail and truck rate at all, but in practical effect and in substance it amounts to that. That is what I meant by saying that if we accept the arguments of the proponents of this tariff that the questions as to law when Division said it is questionable that this is lawful, it is questionable as to proportional rates, etc., they say that those are only questions that may be resolved either way, nevertheless, as I say, resolving those questions in favor of the scheduled tariff leads directly to the Commission doing something by indirection that it admittedly cannot do directly, and upon its own motion.

Commr. CASKIE. But a through rate is the rate of a forwarder; it is not the through rate of any carriers over which we have jurisdiction. The through rate that the shipper would pay, the actual shipper, would be the forwarder's rate, which would be made up of the carload rate of the railroads plus the proportional rate of trucks.

Mr. MATHEWS. That is correct.

Commr. EASTMAN. The Commission found, did it not, that railroads could establish proportional rates in connection with traffic moving beyond or to the rails by truck at a
650 time when we had no authority over trucks, no authority compelling you to charge rates, is that right?

Mr. MATHEWS. I so understand; yes.

Commr. CASKIE. Do you recall the case?

Mr. MATHEWS. No; I do not.

Commr. EASTMAN. It was the Starin-New Haven case.

Mr. MATHEWS. But, as I understand, that is a rate fixed upon application, was it not?

Commr. EASTMAN. My recollection is that it was a statement of general principles in that case.

Mr. MATHEWS. Just one more thing I had to say, and perhaps it is getting away from what I have been trying to say. I am not authorized to speak for any shippers, but obviously these tariffs can benefit only to large forwarders; that is, other shippers that are bringing their commodities into Chicago, shipping their commodities into Chicago, without the intervention of the forwarder. They cannot, as a matter of practice, take advantage of this rate.

I think that is all I have to say. It is simply the position of the rail carriers, as I say, that the tariff is unlawful as determined by the opinion of Division 5, and their position that the opinion of Division 5 should stand.

Commr. EASTMAN. What sections do you think it violates?

Mr. MATHEWS. I can't cite any particular sections.

651 Commr. MEYER. If one shipper has 500 pounds and another has a carload quantity, the one with 500 pounds pays a higher rate than the one who has the carload quantity, doesn't he?

Mr. MATHEWS. I think that is correct.

Commr. CASKIE. Mr. Quirk, you have thirty minutes, and we will run until you complete your argument.

Oral argument of Mr. Robt. E. Quirk

Mr. QUIRK. If the Commission please, in cases of this character someone generally argues, as has been argued here today, that a rate structure is a thing to be coddled for its own sake. I have always had the notion that a rate structure was a means to an end, not the end itself. In other words, it seems to me that rates should be made to fit the commerce of the country and not the commerce made to fit the rates, but when we have disputes of this kind someone always comes forward and insists that this Commission is not a body created by law with statutory powers, which have some limitations, but a body created to settle all sorts of disputes about management between motor carriers.

Now, it is too well settled to require much argument that even common carriers subject to the jurisdiction of this Commission have some rights of management, some rights to initiate their rates, and to make their own rate policy, and that this Commission hasn't any right to impose upon these common carriers its

652 own rate policies. It can interfere if the carrier, when it exercises its right, run afoul of some law that you administer, and some law that says what they did violates that law, but you haven't the authority otherwise.

Now, it has been urged here, to my great surprise, by counsel representing, as I believe, all Western Railroads, that there is something very novel about this proportional rate. Certainly it is no more novel than the rates ruled by this Commission in the Bunker Coal Case. There, with great deliberation, the very carefully worded opinion, and with the Section 2 that you haven't got under the Motor Carrier Act, you prove lower rates on coal merely because it was going to be burnt on a ship than the track delivery rates or the lake cargo rates or the export rates, perhaps, on the same coal from the same points, and you have approved

Exlake iron and ore rates, which reaches the Lake Erie ports in private vessels of private carriers. Therefore, when the rail carriers in the East receive that ore, they are receiving it for all practical purposes, and then in the light of that Negley Case of Justice Cordoza, they receive it from the shipper at the Lake Erie ports, and this Commission has approved that class of rates.

In numerous cases it has not only approved the lake cargo rates on coal moving to the lake, or Lake Erie ports, but it has actually required the railroads, against their judgment, in the 126
653 I. C. C. to reduce those rates 20 cents a ton, although they showed there that they were already lower than the track delivery rates.

This Commission has prescribed exriver rates from the Ohio River on coal reaching Cincinnati by private carriers, which is the same thing as receiving it from the shipper.

Now, the Chairman has mentioned several times that apropos of what this Commission said by way of obiter dicta after it decided the Acme case, the Commission did the extraordinary of saying, now we have some additional discussions, so there runs five or six pages of additional discussions. Among those additional discussions was this opinion, that because under Section 216 of the Motor Carrier Act, motor common carriers are authorized, not compelled—you have no authority to compel it on property—authorized to establish joint rates with rail carriers, water carriers, and express companies, that that means the same thing as if Congress says the motor common carrier can't make joint rates with other classes of common carriers because they are not within your jurisdiction. I don't intend to argue that question now except to say this: no right is more important in America than the right of contract. A joint rate is nothing more than a contract, and Congress has some power under some circumstances under the Constitution to even interfere with the right of contract, but it never should be assumed that they are doing it.

654 Now, I will take this thing a step further, for 30 years at least, in fact, since this Commission was created, it has approved, sanctioned, and interfered with the efforts of railroads to cancel joint rates between railroads in American and joint rates between railroads in Canada and railroads in Mexico. Now, this Commission has no authority over the railroads in Canada or in Mexico, nevertheless, this Commission and the Supreme Court of the United States in the News Syndicate Case, in the Louis Silas Jones Case have sanctioned those rates. Now, what difference is there in principle between a motor common carrier making a joint rate with a common carrier such as the forwarded is, at common law, even though because that carrier

is not subject to your jurisdiction, and a railroad common carrier in this country making a joint rate with a railroad in Canada which is beyond your jurisdiction? I submit that there isn't any difference. In all events, this case involves a very important question. Not only does it involve a question of importance to these respondents, but I think it involves questions of great importance in the matter of administering this law.

If there is one characteristic of a motor carrier that stands out, it is its flexibility. It must have flexibility. It cannot function without flexibility. This Commission has permitted—and
655 if you will examine our Exhibits 5 to 11, we have shown with great pains the tariff reference to all sorts of proportional rates, either voluntarily established or approved or sometimes prescribed by this Commission. Certainly, there is no reason why this Commission should impose upon the motor carrier a more stringent, rigid idea of regulation of rates than it has imposed or has permitted of railroads. You can't make a greater mistake, in my humble opinion, than to insist that the motor carrier can't do along the same general lines what you have permitted for many years of railroads. On the contrary, if there is to be any difference of treatment, the motor carrier, in light of a variety of circumstances and their inexperience with the subject, you ought to be more liberal rather than less liberal with them. With all due respect to the majority of Division 5 in this case, if their views prevail the motor carrier is told that although railroads can make rates of this kind, you can't do it; that is the effect of that decision. And, moreover, it has been done by the Division without affirmatively finding that there would be any violation of the law under these rates.

Now, the Commission has great power; there is no question about that, occasionally, even though it may seem trifle, it is not a bad idea for the Commission itself to think of its own limitations, and perhaps be reminded of them.

In the Santa Fe Case, that is the grain case, 284 U. S., the Court, after referring to your broad powers, made this very
656 significant statement: "But the Commission, exercising a delegated regulatory authority, which does not have the freedom of ownership, operates in a field limited by constitutional rights and legislative requirements. Its duties under Sections 1 (5), 3 (1), 15 (1) of the Interstate Commerce Act, and 3 (1) and 15 (1) with respect to prescribing reasonable rates and preventing of unreasonable or unjust discriminatory and unduly preferential practices, has not been changed by the Hauck-Smith Resolution. The legal standards governing the action of the Commission in determining reasonable rates are

unaltered." The point of this case is, that no matter how desirable it may seem to individual Commissioners, or to the Commission at times, that certain types of operation should not be encouraged, your authority is created by and limited by this law. This Commission has no functions, no authority to do anything in the matter of rates that would directly encourage or discourage the freight forwarder. You are not, or should not, be concerned with how your regulatory powers, when properly exercised, may affect some one; and in this case it has been urged, and Division 5 said, that even if respondents lose the traffic which is worth a million dollars a year to them, and that means perhaps more than it does to these big railroads, there will be the consolation in the fact that other carriers will get the traffic; that is, either railroads or perhaps some other carriers.

657 Well now, this Commission reached some such conclusion in the Milwaukee Case, 294 U. S., and the Supreme Court reversed your order.

Commr. AITCHISON. Is that million dollars gross or net?

Mr. QUIRK. Why, it is gross, as I understand it. It is a million seven hundred and fifty—it is gross.

Commr. LEE. Has anybody figured out whether the forwarders lose anything or gain by this decision, and if so, how much?

Mr. QUIRK. The forwarders?

Commr. LEE. Yes.

Mr. QUIRK. The forwarders use these motor carriers——

Commr. LEE (interposing). But I say, is it in the record how much the forwarder will lose? You said something about motor carriers losing something.

Mr. QUIRK. The forwarder might not be able to do this kind of business. He might have to stop at the terminal in Chicago. There is evidence to show that these shippers at Racine and other points in Wisconsin would be at a disadvantage with competitors in Chicago if they didn't have not only the service that the forwarder gives, but the rates that are charged under this class of service. You understand, these rates are not new, Mr. Commissioner. These rates that are now being put in this form, or attempted to be put in this form, have been in effect for years. They are not new rates.

658 Commr. AITCHISON. I don't know that I understand just how this works. Suppose, taking the Chairman's illustration, someone in Cleveland ships on bill of lading issued to him as shipper from the manufacturer, a carload of shoes in care of Coordinated Transport, Incorporated, of Illinois, at Chicago, or the parties to this tariff, and those shoes are to be broken up into less truckload lots and sent all over the stations in Wisconsin, would that be covered by this tariff?

Mr. QUIRK. I think so; yes. That is my understanding of the tariff. In other words, these respondents, motor carriers, that operate between Chicago and these points in Wisconsin, and between Indianapolis and Evansville and the other points in Indiana, are simply trying to say, what the railroads have been doing for years, that if the business reaches them from a carload, or consolidated carload, at the terminal, they will take it at these rates, and they do it because they get the commodity in larger loads, truckload lots. There is less service, less handling at Chicago, etc., which is one of the reasons why this Commission, when it has been called upon to find proportional rates unlawful, everytime you did it you had Section 2 to be concerned with, but you haven't got it under the Motor Carrier Act. There is no similar thing in the Motor Carrier Act.

Commr. AITCHISON. Isn't there anything similar in the Motor Carrier Act providing against rebates?

659 Mr. QUIRK. Well, there is nothing similar to Section 2; there is nothing similar to that. There are antirebates; yes, Mr. Commissioner, but it is rather an extraordinary thing that there isn't any language in the Motor Carrier Act that is similar to Section 2. Now, you understand, my mere mentioning it will remind you of it, that when you have these proportional rate cases—take the Bunker Case—the Commission literally labored in that case to find some grounds for justifying a lower rate on coal from the same point of origin by the same railroad to the same water port, because it was to be used for bunker purposes than when used for other purposes.

Commr. CASKIE. Well now, wasn't that a case where it was a question of whether it was inter or intrastate commerce?

Mr. QUIRK. Oh, no. That was a nation-wide case.

Commr. MEYER. That there was a difference in the services at the terminals?

Mr. QUIRK. That is what you finally found, and that is the reason—you had to find that or else there would be a violation of Section 2. You found that, and that is the point I am making, that when it comes to a railroad proportional rate, like the Lake Cargo rates, and others, you have got a more difficult problem because of Section 2 than you have here. I am not laboring that point, but it is a fact, that in all these proportional rate cases that involve railroads the Commission has been able to justify them when

660 there has been any dispute about them, because of an ultimate finding that the transportation conditions with respect of that rate was different than with respect to track delivery or local rates.

I have been in a great many cases in twenty-five years with and practiced before this Commission. I have never listened to more

convincing testimony than was put in this case voluntarily by twenty-six business men about the service that they get from these forwarders, and contrary to the popular impressions, these rates on shoes and other commodities from Boston, New York, going out into this territory, that the forwarders publish and have on file with this Commission, whether they should be there or not is beside the point, those are the rates that they publish, and I understand they are the rates that they charge. They are the same or higher there than the rail rates. They aren't lower than the rail rates. Of course, the forwarder, when he puts the miscellaneous lot of commodities into a carload, he is able by that means to get a lower charge himself, but the shipper uses the forwarders, as these shippers one after the other said, because of the service. For instance, here is a——

Commr. EASTMAN (interposing). Forwarders' rates would normally be lower than the less than carload rates of the railroad, and they ought to be lower, shouldn't they?

661 Mr. QUIRK. That is right; yes, on a single item. They are the same on these all through points which it is difficult to reach.

This testimony that I am about to read is typical of other testimony in the case. This is of George W. Logan, of Kokomo, Indiana. He is with the Kingston Products Corporation, a manufacturer of roller skates, toys, radios, ignitions, specialties, etc. Now, he said he had been using forwarder service for 10 or 12 years and that it had at all times been satisfactory; that he handled great volumes of business; it must be expedited. "We have used forwarder service to points in Virginia; Buffalo, New York; Atlanta, Georgia; Denver. Rates charged by forwarding companies are no different from rail rates, except to the Western Coast. We use the forwarder service where their rate is higher than the rail rate for a quick service rather than an express service, because we receive about the same service that we would receive by express, and we will make a savings between express and freight rates. We have several points in from the East"—rather awkwardly expressed here—"points in Connecticut, near Stamford, Connecticut. Merchandise shipped to those points by forwarding companies gives us faster service, and at the same time we make a saving between the freight rate and the express rate." And so it goes. That is page 52 and page 53 of our abstract, called Volume 2 of our brief.

662 Commr. MEYER. How would you classify those 26, as pirates or small economic royalists, or how?

Mr. QUIRK. You know them better than we do, Mr. Commissioner, they are from your state. I'll let you classify them.

There is J. I. Case Company, that is rather large. They might be an economic royalist. Well, here is S. E. Johnson & Sons, of Racine. They manufacture floor wax. I don't know whether they are economic royalists are not. And there is the Western Printing and Lithographing Company. He told a very interesting story about how it was necessary to get the forwarder service to contract delivery of a large volume of Snow White and the Seven Dwarfs, and no other service, he said, was available to them to make that delivery at the cost they could stand except the forwarding service. And so it goes. You can see all these gentlemen, Mr. Commissioner Meyer—I don't know, some of them might be economic royalists and some of them may just be Democrats; I can't tell which.

Commr. CASKIE. And they might be Republicans.

Commr. ROGERS. Can you give us some idea generally of the difference in the payment of local and the proportional, how much it amounts to?

Mr. QUIRK. I don't know that I understand just what you mean. The difference between the local rates here?

Commr. ROGERS. The proportional rates and the local rates, how much does the difference amount to?

663 (Discussion off the record.)

Mr. QUIRK. I don't believe I can answer that. Exhibit 18, Mr. Commissioner, may help you on that. I haven't much time. You can read it just as well as I can. I think it does answer your question.

Division 5 indicated that one of the doubts about this character of rate that it may not be a true proportional rate, and that one reason why it might not be a true proportional rate is because there wasn't a continuity of movement. Well, there is no continuity of movement of iron ore in boatloads to the ports and carloads from the ports; there is no continuity of coal in carloads to the ports and boatloads of private carriers from the ports.

Commr. AITCHISON There is always continuity if circumstances reasonably permit it, isn't there?

Mr. QUIRK. Yes; and so is there here. There is more continuity here than there is there, so far as I can see.

Commr. AITCHISON. Relatively?

Mr. QUIRK. Yes. There is no great continuity when you have grain into a transit point and flour out, or logs into a transit point and staves and furniture out, and you have through-rate arrangements on those things. In other words, gentlemen of the Commission, there is nothing novel about this rate. It simply cannot be condemned properly on any such basis. The rate meets

664 every test of this law. It is a reasonably compensatory rate; it isn't unjust and discriminatory, and whether or

not you are right or wrong in all these decisions where you have found that undue prejudice will not ordinarily exist unless someone is there that will be injured; in other words, the whole theory of that, as expressed by the United States Supreme Court, 209 U. S., the Great Western Case, as I recall it, after all, to be an undue prejudice, it must be undue in the first place, it must be unreasonable, it must be something that is unreasonable. Just discrimination isn't unlawful, it is not necessary for me to argue that, but the theory is that what is given by a carrier to one class of traffic must operate to his positive advantage in some way or other, and to the positive disadvantage of the other.

Commr. PORTER. Do I understand, Mr. Quirk, that it is your position that the Motor Carrier Act does not prohibit unjust discrimination?

Mr. QUIRK. No; I didn't say that. Unjust discrimination and undue prejudice, Mr. Commissioner, are used quite often interchangeably.

Commr. PORTER. Yes; but evidently not in this section. My point is, that while unjust discrimination is not defined as it is in the Interstate Commerce Act, Section 2, yet it uses the prohibition as against unjust discrimination which evidently is just as broad as those terms must be in the Interstate Commerce Act.

665 Mr. QUIRK. If it is, it is there by interpretation. All I said was——

Commr. PORTER (interposing). No; it is there in language, unjust discrimination is prohibited.

Mr. QUIRK. They might have said that in—they might have merely been content——

Commr. PORTER (interposing). Section 2.

Mr. QUIRK (continuing). In the Interstate Act. All I said—you may not have understood me—was that there is no language in the Motor Carrier Act that is similar to the language in Section 2. Now, I agree that there is room for argument there as to how you might interpret it; anyway, I don't labor the point, it isn't necessary. It isn't necessary to have that distinction for us to prevail in this case.

Commr. AITCHISON. It may be even broader in the Motor Carrier Act in Part 1.

Mr. QUIRK. I wouldn't say so; no.

Commr. AITCHISON. In part 1 they have defined unjust discrimination, and in Part 2 they have simply used the terms which may mean——

Mr. QUIRK (interposing). Well, Mr. Commissioner, that is a very interesting subject, but I am quite sure you will agree with me that if Congress had not seen fit to define unjust dis-

crimination and undue prejudice, you would have
666 looked for the meaning of those terms in the English law, and you would probably come to the same end by interpretation that you are anyway; I don't know. I say, I don't mean to labor that point much. I thought it was rather interesting.

Now, there has been much said about the all-commodity rates; there is something very iniquitous about that. But what is it? I one of those who believes that the railroads have adhered to that classification, that elaborate thing called a classification, much too long in their own interest. The all-commodity rate system after all is really a system of making rates, and the Supreme Court in the old C. & O. and T. P. case, in 162, went out of its way to say that common carriers, outside of those inhibitions in the law, has a right to make special rates, to classify their traffic as they saw fit, and to do other things that other men would do in other trades. In other words, this Commission hasn't the right under the law to condemn a commodity rate merely because it is a commodity rate, and I don't think you have right to condemn it even though someone else might not like it. In other words, while it would be fine if you were just the managers of the railroads; at times I think the railroad attorneys and others want you to be, despite what they say at other times, but if you were just the managers of the railro'd, you had the primary responsibility of doing all these things indstead of merely correcting wrongs that grow up, it may be that you would do a much
667 better job than some them do, but haven't that authority yet, and you must stay within the Act, and therefore I say however much you may be urged to do it, and you are urged to do it very often, you—for instance, don't allow these common carriers out in Indiana and Illinois to make the kind of rate they think is necessary for them to exist because it might have some effect at some future time in some nebulous, indefinite way on Mr. Cotterill's clients, although there is no evidence here to show that it ever would. Congress didn't give you that kind of power. You have got to deal with these rate problems as they come up, and you should never forget that there still is left some discretion in the management of these carriers.

There is one point that was stated—I don't know that I can recall the connection now. These tariffs provide pick-up-and-delivery service in the terminals. That answers the point made by Mr. Watkins that they couldn't be used by shippers because they would have to perform their own terminal service, but the tariff itself provides pick-up-and-delivery service, so that is that.

Now, as to the thing being special and applicable only, answering Mr. Cotterill, to big shippers. There are thousands of ship-

pers in this country that never have enough business to use a carload, and still this Commission hasn't yet found that a
668 carload rate on the same traffic between the same points lower than a less carload rate is unlawful on that account. If I had the time—just look at your tariffs and look at your maps, and look at the commodity rates from squeedunk and other points scattered through this country and you will find commodity rates on certain commodities that are made only by one shipper in that town. Now these tariffs——

Commr. AITCHISON (interposing). We couldn't do that. That isn't in the record, Mr. Quirk.

Mr. QUIRK. Well, all right. I agree with you on that. You shouldn't do that perhaps, but you do know that.

Commr. CASKIE. This case is submitted and will be taken under advisement.

(The above case submitted as indicated.)

706 [Secretary's certificate omitted in printing.]

707 *Order*

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 6th day of January, A. D. 1936

The matter of regulations governing the form, publication, filing, and posting of tariffs by common carriers by motor vehicle, also joint tariffs of common carriers by motor vehicle and common carriers by water other than railroad-owned or controlled water carriers, and governing the form, publication and inspection of schedules of contract carriers by motor vehicle pursuant to Sections 217 and 218 of the Motor Carrier Act, 1935, being under consideration:

It is ordered, That tariffs of common carriers of property by motor vehicle, joint tariffs of common carriers of property by motor vehicle and common carriers by water, other than railroad-owned or controlled water carriers, and schedules of contract carriers of property by motor vehicle, shall be published, filed, posted, and kept open for public inspection in the form and manner prescribed in Tariff Circular MF No. 1, said circular being hereby approved and made effective on January 8, 1936.

By the Commission, Division 5:

[SEAL] GEORGE B. MCGINTY,
Secretary.

708 TARIFF CIRCULAR MF No. 1

Interstate Commerce Commission, Bureau of Motor Carriers

Regulations to govern the construction and filing of common carrier freight rate and classification publications and contract carrier schedules of minimum rates or charges: United States Government Printing Office, Washington, 1936.

709 Foreword

Contrary to the understanding of many operators, the Commission will not prescribe initial [first] rates or charges for motor carriers. The Motor Carrier Act, 1935, leaves such rates or charges to the discretion of the carriers. Thereafter the Commission may, upon complaint or upon its own initiative, require changes in rates or charges, which it finds to be unlawful, or prescribe new rates or charges, but only after a formal hearing.

The Commission deems it desirable to prescribe at this time only a few simple regulations to govern the construction, filing and posting of tariffs and schedules. These regulations may have to be changed or amplified later, but before that is done, there will be opportunity to study the tariffs and schedules initially filed and learn more about what is needed.

Carriers which are already using printed [5] tariffs or schedules may, if they so desire, file such publications with the Commission as their initial tariffs or schedules, provided they feel that such publications meet the general intent of these regulations. All initial tariffs or schedules filed will be deemed to comply with the law relative to filing, unless and until they are rejected by the Commission with directions to file other tariffs or schedules in lieu thereof. In the event of such directions, the tariffs or schedules already filed shall be the effective tariffs or schedules until revised tariffs or schedules have been filed with the Commission in accordance with its directions. All tariff publications filed after the initial tariffs or schedules have been filed must conform to these regulations.

Tariffs containing joint rates or charges applying in connection with rail carriers or railroad-owned water carriers are to be published and filed in accordance with Tariff Circular No. 20. Tariffs containing joint rates or charges applying in connection with water carriers, other than railroad-owned, are to be published and filed in accordance with these regulations.

[5] "Printed" includes reproduction by mimeograph, planograph, stereotype, or by other similar durable process.

Whenever tariffs or schedules already printed are used for filing, the MF–I. C. C. number, the new date of issue and the effective date must be shown and may be applied with pen and ink. (See rule 2 (a) and (e).

710 Regulations issued by the Interstate Commerce Commission under authority of sections 217 and 218 of the Motor Carrier Act, 1935, to govern the construction and filing of freight rate tariffs, schedules, and classifications by common and contract carriers, as defined in said act

Approved January 6, 1936. Effective January 8, 1936

All tariffs and schedules filed on and after the date of approval hereof must conform to these regulations, except as indicated in the Foreword hereof or otherwise authorized by the Commission.

The term "tariff" as used herein means a publication stating the rates and charges of a common carrier, and all rules which it applies in connection therewith.

The term "schedule" as used herein means a publication stating the minimum rates and charges of a contract carrier, and all rules which it applies in connection therewith.

Section 1. Common Carrier Tariffs

Rule 1. Construction and filing of tariffs

(a) All tariffs and supplements thereto must be in book, pamphlet, or loose-leaf form of size 8 by 11 inches. They must be plainly printed, mimeographed, planographed, stereotyped, or reproduced by other similar durable process on paper of good quality.

No alteration in writing or erasure shall be made in any tariff or supplement thereto.

A margin of not less than five-eighths of an inch without any printing thereon must be allowed at the binding edge of each tariff and supplement.

(b) All tariffs and supplements must be filed and posted at least 30 days prior to the effective date thereof, unless otherwise authorized by the Commission.

(c) Issuing carriers or their agents shall transmit to the Commission three copies of each tariff, supplement, or revised page. All copies shall be included in one package accompanied by a letter of transmittal listing all tariffs enclosed and addressed to the Interstate Commerce Commission, Bureau of Motor Carriers, Section of Traffic, Washington, D. C. All postage, etc., must be prepaid.

711 Rule 2. Title page of every tariff and supplement shall show in the order named

(a) On upper right-hand corner each tariff shall be numbered beginning with no. 1. Such number shall be shown as follows:

MF–I. C. C. No. —

When tariffs are issued canceling a tariff or tariffs previously filed, the MF–I. C. C. number or numbers of the tariff or tariffs canceled must be shown in the upper right-hand corner immediately under the MF–I. C. C. number of the new tariff.

Example:

MF–I. C. C. No. 2
cancels
MF–I. C. C. No. 1

(b) Supplements to a tariff in addition to showing the MF–I. C. C. number of the tariff amended thereby shall be numbered beginning with the number 1 and such information shall be shown in the upper right-hand corner. Supplements shall also show in the upper right-hand corner the number of any previous supplement canceled thereby and also the numbers of the supplements containing all changes from the tariff.

Example:

Supplement No. 3
to
MF–I. C. C. No. 1
cancels Supplement No. 2
Supplements Nos. 1 and 3 contain all changes

(c) Name of carrier or name of agent issuing tariff.

Whenever two or more carriers join in a through rate the names of all such carriers must be shown. The name of a carrier must be the same as that appearing in its application for a certificate. In the event of a successor its name must be shown as "successor to ———" as follows:

Example:

John Doe and William Doe
(Successors to A. B. C. Transportation Co.)

If the carrier is not a corporation, and a trade name is used, the name of the individual or partners must precede the trade name.

Example:

John Doe and William Doe
doing business as
A. B. C. Transportation Co.

712 Whenever two or more carriers join in a through rate, authority by means of proper power of attorney or concurrence, as provided in rule 10, must be give the agent or carrier publishing the tariff.

(d) A brief description of the territories in which, or points from and to or between which, the tariff applies.

(e) Date of issue and date effective.

(f) Name, title, and street address of officer or agent by whom tariff is issued.

Rule 3. Tariffs shall contain in the order named

(a) Table of contents, arranged in alphabetical order showing the number of the page on which each subject may be found. If a tariff contains so small a volume of matter that its title page or interior arrangement plainly discloses its contents, the table of contents may be omitted.

(b) A complete index of all commodities on which specific rates are named therein, together with reference to the page or items in which they are shown. No index need be shown in tariffs of less than 5 pages or if all the rates to each destination are alphabetically arranged by commodities.

(c) Explanation of all abbreviations, symbols, and reference marks used in the tariff.

(d) When a tariff names rates by classes, a classification of articles must be published in the tariff or in a separate tariff. When a classification is published in a separate tariff, reference must be made thereto on the title page of the rate tariff as follows:

> Governed, except as otherwise provided herein, by the (here name) classification, (show issuing agent) MF-I. C. C. No. — (or I. C. C. No. —) supplements to or successive issues thereof.

(e) Table of rates.—All rates must be explicitly stated in cents or in dollars and cents, per 100 pounds, per mile, per hour, per cubic foot, per ton of 2,000 pounds, per ton of 2,240 pounds, per stated truck load, or other definable measure.

Where rates are stated in amounts per package or bundle definite specifications of the packages or bundles must be shown.

Tariffs containing tables of rates based on distances from point of origin to destination must show the mileages or indicate a definite method by which such mileages shall be determined.

Rule 4. Commodity rates

Commodity rates may be published on articles in stated truckload or less-than-truckload quantities and, if so published, shall take precedence over class rates.

713

Rule 5. Tariff changes

(a) Rates, charges, and classifications which have been filed with the Commission must be allowed to become effective and remain in effect for a period of at least 30 days before being changed, canceled, or withdrawn, unless otherwise authorized by the Commission.

(b) All tariffs, supplements, and revised pages shall indicate changes from preceding issues by use of the following symbols:

- ♦ or (R) to denote reductions.
- ♦ or (A) to denote increases.
- ▲ or (C) to denote changes, the result of which is neither an increase nor a reduction.

The proper symbol must be shown directly in connection with each change.

Rule 6. Posting regulations

Each carrier must post and file at each of its stations or offices at which an exclusive agent is employed all of the tariffs or schedules applying from, or at, such station or office and must also post and file at its principal place of business all of its tariffs or schedules. All tariffs or schedules must be kept available for public inspection or examination at all reasonable times.

Section 2. Contract Carrier Schedules and Contracts

Rule 7. Construction, filing, and posting of schedules

All schedules of contract carriers of property must conform to the requirements set forth to govern the construction, filing, and posting of common carriers' tariffs and supplements in rules 1, 2, 3, 4, 5, and 6 of section 1.

Wherever in such rules the words "tariff" or "tariffs" appear, substitute the words "schedule" or "schedules."

Wherever in such rules the words "rates or charges" appear, substitute the words "minimum rates or charges."

Wherever in such rules there appears reference to "certificate" substitute the word "permit."

Rule 8. Filing of contracts

Section 218 (a) of the Motor Carrier Act, 1935, provides that the filing of copies of contracts containing the minimum
714 charges of contract carriers for the transportation of passengers or property in interstate or foreign commerce is permitted in the discretion of the Commission.

Whenever it is desired to file copies of contracts in lieu of schedules, carriers must first secure authority from the Commission to do so. Applications requesting permission to file contracts in lieu of schedules must state fully the reasons for the carriers' request. Such applications shall be made in duplicate on paper 8 by 10½ inches.

Section 3. Miscellaneous Rules and Forms

Rule 9. Applications

Carriers and agents when making application for permission to establish rates, charges, classification ratings, or rules on less than statutory (30 days') notice shall observe the following form. Size 8 by 10½ inches.

(Name of carrier in full)

---, 19--
(Place and date)

To the INTERSTATE COMMERCE COMMISSION,
BUREAU OF MOTOR CARRIERS,
Washington, D. C.:

The [name of carrier], by [name of officer], its [title of officer], does hereby petition the Interstate Commerce Commission that it be permitted, under section 217 [or 218] of the Motor Carrier Act, 1935, to put in force the following [state whether rates, charges, classification ratings, or rules], to become effective [number of days] days after filing thereof with the Interstate Commerce Commission:

(State fully, either specifically or by reference to an accompanying exhibit, the rates, charges, classification ratings, or rules which it is desired to put into effect, and the points of origin and destination. If permission is sought to establish a rule, the exact wording of the proposed rule must be shown)

Your petitioner further represents that the said [state whether rates, charges, classification ratings, or rules] above mentioned will be published in tariff MF-I. C. C. no. — [or in consecutively numbered supplement to MF-I. C. C. no. —], and will supersede and take the place of the [state whether rates, charges, classifi-

715 cation ratings, or rules] on like traffic from and to the points above named which are set forth in tariff MF–I. C. C. no. — [or supplement] on file with the Commission.

(Here state, either specifically or by reference to an accompanying exhibit, the present rates, charges, classification ratings, or rules, together with the MF–I. C. C. numbers in which published and the effect of the proposed change)

(State name of principal carriers known to be publishing competitive rates, charges, classification ratings, or rules covered by the application between the same and related points and the MF–I. C. C. numbers of the tariffs containing such rates, etc.)

(State whether or not the proposed rates, charges, classification ratings, or rules, including the request to establish on less than statutory (30 days') notice, have been called to the attention of such carriers and their views thereon)

(State the method or basis used in arriving at the proppsed rates)

And your petitioner further bases such request upon the following facts, which present certain special circumstances and conditions justifying the request herein made.

(State fully all other circumstances and conditions which are relied upon as justifying the application and which may aid the Commission in determining the question presented. If short notice is requested, state why change was not established upon statutory (30 days') notice)

(Name of carrier in full)

By ---
(Name and title of person signing)

Subscribed and sworn to before me this ------ day of ---------
(Only original need be executed)
------, 19--.

(Notary public)

Rule 10. Powers of attorney and concurrences

(a) Whenever a carrier desires to give authority to an attorney and agent to issue and file tariffs and supplements thereto in its stead, a power of attorney in the following form, size 8 by 10½ inches, shall be used:

MFXA1 No. --
Cancels MFXA1 No. --
[Name of carrier],
[Post Office Address],
---------, 19--.

Know all men by these presents:

That the [name of carrier] has made, constituted, and appointed, and by these presents does make, constitute, and ap-

716 point [name of principal agent appointed] its true and lawful attorney and agent for the said carrier and in its name, place, and stead, (1) for it alone and (2) for it jointly with other carriers, to publish and file freight rate tariffs naming [here specify whether rates and charges and/or rules, applying from, to, or at points on or via its route or routes, or classifications] as required of common carriers of property by the Motor Carrier Act, 1935, and by regulations established by the Interstate Commerce Commission thereunder. [If the authority granted runs only to a specific tariff, so state and describe such issue as follows:]

[Here give exact description of title page of tariff, or classification, including MF-I. C. C. number and name of series. When date of issue and/or effective date are determined, such date or dates must be shown.]

And the said [name of carrier] does hereby give and grant unto its said attorney and agent full power and authority to do and perform all and every act and thing above specified as fully to all intents and purposes, as if the same were done and performed by the said carrier, hereby ratifying and confirming all that its said attorney and agent may lawfully do by virtue hereof, and assuming full responsibility for the acts and neglects of its said attorney and agent hereunder.

And further, That the [name of carrier] has made, constituted, and appointed, and by these presents does make, constitute, and appoint as alternate [name of alternative agent appointed] its true and lawful attorney and agent, for said carrier and in its name, place, and stead, (1) for it alone and (2) for it jointly with other carriers in case and only in case of the death or disability of the said [here insert name of principal agent] to do and perform the same acts and exercise the same authority as hereinabove granted to [here insert name of the agent first hereinabove named].

In witness whereof the said carrier has caused these presents to be signed in its name by its [here give title of person signing] at [name of city or town] in [name of county] State of [name of State] on this [date] day of [month], 19...

(Name of carrier in full)

By ---
(Name and title of person signing)

Attested: ---
(Witness)

[Corporate seal if any.]

(b) Whenever a carrier desires to concur in tariffs issued and filed by another carrier or its agent, a concurrence in the

following form shall be issued in favor of such other carrier. Size 8 by 10½ inches.

717

MFXC1 No. --
Cancels MFXC1 No. --

[Name of Carrier],
[Post Office Address],
----------, 19----.

To the INTERSTATE COMMERCE COMMISSION,
BUREAU OF MOTOR CARRIERS, SECTION OF TRAFFIC,
Washington, D. C.

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any tariff or supplement thereto which [name of carrier to whom concurrence is given] or its agent may publish and file and in which this carrier is shown as a participating carrier and hereby makes itself a party thereto and bound thereby, insofar as such tariff or supplement contains [here specify whether rates or charges applying from, to, or at points on or via its route or routes or classifications], until this authority is revoked by formal notice of revocation filed with the Interstate Commerce Commission and sent to the carrier to which this concurrence is given. [If the authority granted runs only to a specific tariff, so state and describe such issue as follows]:

[Here give exact description of title page of tariff or classification, including MF-I. C. C. number and name of series. When date of issue and/or date effective are determined, such date or dates must be shown.]

(Name of carrier in full)

By ----------
(Name and title of person signing)

Attested:----------
(Witness)

[Corporate seal if any.]

(c) The original of all powers of attorney and concurrences shall be filed with the Commission and a duplicate of the original sent to the agent or carrier in whose favor such document is issued.

(d) Whenever a carrier desires to cancel the authority granted an agent or another carrier by power of attorney or concurrence, this may be done by a letter addressed to the Commission revoking such authority on 60 days' notice. Copies of such notice must also be mailed to all interested parties.

718 SUPPLEMENT NO. 1 TO TARIFF CIRCULAR MF NO. 1

Interstate Commerce Commission, Bureau of Motor Carriers

Supplement No. 1 to regulations to govern the construction and filing of common carrier freight rate and classification publications and contract carrier schedules of minimum rates or charges. United States Government Printing Office, Washington, 1936.

719 ORDER

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 7th day of November, A. D. 1936

In the Matter of Regulations Governing the Construction, Filing, and Posting of Tariffs by Common Carriers by Motor Vehicle, and the Form, Publication and Inspection of Schedules of Contract Carriers

The matter of regulations governing the construction, filing, and posting of tariffs by common carriers by motor vehicle, also joint tariffs of common carriers by motor vehicle and common carriers by water, other than railroad owned or controlled water carriers, pursuant to section 217 of the Motor Carrier Act, 1935, and governing the form, publication and inspection of schedules of contract carriers by motor vehicle, filed pursuant to section 218 of the said Motor Carrier Act, being under consideration and good cause appearing therefor:

It is ordered, That tariffs of common carriers of property by motor vehicle, also joint tariffs of common carriers of property by motor vehicle and common carriers by water, other than railroad owned or controlled water carriers, filed pursuant to section 217 of the said act, and schedules of contract carriers of property by motor vehicle, filed pursuant to section 218 of the said act, shall be constructed, filed, published, posted, and kept open for public inspection in accordance with regulations heretofore adopted and promulgated in Tariff Circular MF No. 1 as modified and supplemented by Supplement No. 1 to said Tariff Circular MF No. 1;

It is further ordered, That the said Supplement No. 1 to said Tariff Circular MF No. 1 be, and it is hereby, approved and made effective January 1, 1937.

By the Commission, Division 5.

[SEAL] GEORGE B. MCGINTY,
Secretary.

720 Section 1. Common Carrier Tariffs

Amendment to rule 3, page 3, of Tariff Circular MF No. 1

Amend paragraph (d) of rule 3 to read as follows:

(d) When a tariff names rates by classes, a classification of articles must be published in the tariff or in a separate tariff. When a classification is published in a separate tariff, reference must be made thereto on the title page of the rate tariff as follows:

> Governed, except as otherwise provided herein, by the [here name] classification [show issuing agent] MF–I. C. C. No. — (or I. C. C. No. —) supplements to or successive issues thereof.

All carriers shown as originating carriers in a rate tariff which is governed by a separate classification must be named as participating carriers in such separate classification.

Add the following paragraph to rule 3:

(f) Carriers or their agents may not publish class or commodity rates which duplicate or conflict with rates published by or for account of such carriers.

Section 3. Miscellaneous Rules and Forms

(Rule 9 cancels rule 9, pages 5 and 6 of Tariff Circular MF No. 1)

Rule 9. Applications for special permission

(a) The Motor Carrier Act, 1935, authorizes the Commission in its discretion and for good cause shown to permit changes in rates on less than statutory notice, and also to permit departure from the Commission's regulations. The Commission will exercise this authority only in cases where actual emergency and real merit are shown. Desire to meet the rates of a competing carrier that has given statutory notice of change in rates will not of itself be regarded as good cause for permitting changes in rates or other provisions on less than statutory notice. Clerical or typographical errors in tariffs constitute good cause for the exercise of this authority, but every application based thereon must plainly specify the error together with a full statement of the attending circumstances and must be presented with reasonable promptness after issuance of the defective tariff, supplement or revised page.

(b) When a formal order of the Commission requires publication on a stated number of days' notice, a request addressed to the

Bureau of Motor Carriers for authority to file on less notice
721 will not be granted. In any such instance a petition for modification of the order should be filed on the formal docket.

(c) Applications for permission to establish rates, rules, or other provisions on less than statutory notice, or for waiver of the provisions of this Tariff Circular must be made by the carrier or agent that holds authority to file the proposed publication. If the application requests permission to make changes in joint tariffs, it must state that it is filed for and on behalf of all carriers parties to the proposed change.

(d) Two copies of applications (including amendments thereto and exhibits made a part thereof) shall be addressed to the Interstate Commerce Commission, Bureau of Motor Carriers, Washington, D. C. An additional exact copy shall be addressed to the office of the District Director, Bureau of Motor Carriers, Interstate Commerce Commission, of the district in which the main office of the applicant carrier or publishing agent is located. The application shall indicate that an exact copy including exhibits has been furnished the district office.

Applications shall be made on paper 8 by 10½ inches, shall be in substantially the form shown hereinbelow, and shall give all the information required by this rule together with any other pertinent facts. They shall be numbered consecutively and must bear the signature of the carrier or its agent or officer, specifying title.

(Address)

(Date)

TO THE INTERSTATE COMMERCE COMMISSION,
BUREAU OF MOTOR CARRIERS,
Washington, D. C.

Application No. ---

---, by ---, for
(Name of carrier) (Name of officer, specifying title)

and on behalf of all carriers parties to its Tariff MF-I. C. C. No. —,* does hereby petition the Interstate Commerce Commission that he [it] be permitted, under Section 217 of the Motor Carrier Act, 1935, to put in force the following tariff provisions to become effective ---- days after the filing thereof with the Interstate Commerce Commission:

(Here show matter as directed by section (e), paragraph (1) of this rule)

* If reference to tariff or tariffs does not exactly designate carrier involved, other methods of designating carrier should be employed.

Your petitioner further represents that the said [state whether rates, charges, classification ratings, or other provisions]
722 above mentioned will be published in [here show matter as directed by section (e), paragraph (2) of this rule].

(Here state matter as directed by section (e), paragraph (3) of this rule.)

(Here state matter as directed by section (e), paragraph (4) of this rule.)

(Here state fully matter as directed by section (e), paragraph (5) of this rule.)

(Here set forth the justification as directed by section (e), paragraph (6) of this rule.)

(Name of carrier)

By ---
(Name and title)

Verification:[1]

The above statement was subscribed and sworn to before me this ____ day of ____, 19__.

(Notary public)

When the application is made by an agent, appropriate change should be made in the introductory and closing paragraphs of this form.

(e) Applications shall show the following information:

(1) The proposed tariff provisions shall be set forth clearly and completely. An accompanying exhibit may be used if identified by letter, such as Exhibit A, and so referred to in the application. If the proposed provisions consist of rates, all points of origin and destination must be shown or definitely indicated; if permission is sought to establish a rule, the exact wording of the proposed rule must be given.

(2) The application shall show the tariffs and MF–I. C. C. numbers of the publications in which the proposed rates, ratings, rules, or other provisions will be published. If publication is to be made in supplements to tariffs already referred to, this fact shall be shown.

(3) The application shall set forth the rates or tariff provisions which it is desired to change. Where the matter to be shown is voluminous or for other reasons difficult of presentation, it may be included in an accompanying exhibit, properly identified and referred to in the application. Reference shall be made by MF–I. C. C. number and supplement number to the tariffs or supplements in which rates or provisions to be superseded are

[1] Only the original need be executed.

published. If such provisions are published in numbered items or other units, reference shall be made thereto by number, or, if not so published, the pages of the publication on which the provisions appear shall be shown. The extent to which cancellations will be made must be definitely indicated.

(4) The application shall state the names of carriers known to maintain competitive rates, charges, classification ratings,
723 or rules between the same points or points related thereto, together with the MF–I. C. C. numbers of the tariffs and supplements thereto containing such provisions.

(5) The application shall state whether such carriers have been advised of the proposed rates, charges, classification ratings, or rules and whether they have been advised that it is proposed to establish such provisions on less than statutory notice. If competitive carriers have expressed their views in regard to the proposed provisions, a brief statement of their views shall be given.

(6) The application shall state the special circumstances or unusual conditions which are relied upon as justifying the requested permission together with any related facts or circumstances which may aid the Commission in determining whether the requested permission is justified. If permission to establish provisions on less than statutory notice is sought, the petitioner shall state why the proposed provisions could not have been established upon 30 days' notice.

(f) If the authority granted by special permission is used, it must be used in its entirety and in the manner set forth in the order of special permission. If it is not desired to use all of the authority granted and less or more extensive or different authority is desired, a new application complying with the provisions of this rule in all respects and referring to the previous permission must be filed.

724 TARIFF CIRCULAR MF No. 2 CANCELS TARIFF CIRCULAR MF No. 1

Interstate Commerce Commission, Bureau of Motor Carriers

Regulations to govern the construction and filing of common carrier freight rate and classification publications and contract carrier schedules of minimum rates or charges. United States Government Printing Office, Washington, 1937.

725 ORDER

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 24th day of November, A. D. 1937.

In the Matter of Regulations Governing the Construction, Filing, and Posting of Tariffs by Common Carriers by Motor Vehicle, and the Form, Publication and Inspection of Schedules of Contract Carriers.

The matter of regulations governing the construction, filing, and posting of tariffs by common carriers by motor vehicle, also joint tariffs of common carriers by motor vehicle and common carriers by water, other than railroad owned or controlled water carriers, pursuant to section 217 of the Motor Carrier Act, 1935, and governing the form, publication, and inspection of schedules of contract carriers by motor vehicle, filed pursuant to section 218 of the said Motor Carrier Act, being under consideration and good cause appearing therefor:

It is ordered, That tariffs of common carriers of property by motor vehicle, also joint tariffs of common carriers of property by motor vehicle and common carriers by water, other than railroad owned or controlled water carriers, filed pursuant to section 217 of the said act, and schedules of contract carriers of property by motor vehicle, filed pursuant to section 218 of the said act, shall be constructed, published, filed, posted, and kept open for public inspection in accordance with regulations adopted and promulgated in Tariff Circular MF No. 2 which regulations shall cancel and supersede regulations heretofore adopted and promulgated in Tariff Circular MF No. 1 and Supplements Nos. 1 and 2 thereto;

It is further ordered, That the said Tariff Circular MF No. 2 be, and it is hereby, approved and made effective February 1, 1938.

By the Commission, Division 5.

[SEAL.] W. P. BARTEL,
Secretary.

726 Regulations issued by the Interstate Commerce Commission under authority of Sections 217 and 218 of the Motor Carrier Act, 1935, to govern the construction and filing of freight rate tariffs, schedules, and classifications by common and contract carriers, as defined in said act

Approved November 24, 1937. Effective February 1, 1938

All tariffs and schedules filed on and after February 1, 1938, must conform to these regulations, except as otherwise authorized by the Commission.

The term "tariff" as used herein means a publication stating the rates and charges of a common carrier, and all rules which it applies in connection therewith.

The term "schedule" as used herein means a publication stating the minimum rates and charges of a contract carrier, and all rules which it applies in connection therewith.

Section 1. Common Carrier Tariffs

Rule 1. Construction and filing of tariffs

(a) All tariffs and supplements thereto must be in book, pamphlet, or loose-leaf form of size 8 by 11 inches. They must be plainly printed, mimeographed, planographed, stereotyped, or reproduced by other similar durable process on paper of good quality.

No alteration in writing or erasure shall be made in any tariff or supplement thereto.

A margin of not less than five-eighths of an inch without any printing thereon must be allowed at the binding edge of each tariff and supplement.

(b) All tariffs and supplements must be filed and posted at least 30 days prior to the effective date thereof, unless otherwise authorized by the Commission.

727 (c) Issuing carriers or their agents shall transmit to the Commission three copies of each tariff, supplement, or revised page. All copies shall be included in one package accompanied by a letter of transmittal (in duplicate if a receipt is desired) listing all tariffs enclosed and addressed to the Interstate Commerce Commission, Bureau of Motor Carriers, Section of Traffic, Washington, D. C. All postage, etc., must be prepaid.

Rule 2. Title page of every tariff and supplement shall show in the order named

(a) On upper right-hand corner each tariff shall be numbered beginning with No. 1. Such number shall be shown as follows:

MF-I. C. C. No. —

When tariffs are issued canceling a tariff or tariffs previously filed, the MF-I. C. C. number or numbers of the tariff or tariffs canceled must be shown in the upper right-hand corner immediately under the MF-I. C. C. number of the new tariff.

Example:

MF-I. C. C. No. 2

cancels

MF-I. C. C. No. 1

(b) Supplements to a tariff in addition to showing the MF-I. C. C. number of the tariff amended thereby shall be numbered beginning with the number 1 and such information shall be shown

in the upper right-hand corner. Supplements shall also show in the upper right-hand corner the number of any previous supplement canceled thereby and also the numbers of the supplements containing all changes from the tariff.

Example:

Supplement No. 3
to
MF–I. C. C. No. 1
cancels Supplement No. 2
Supplements Nos. 1 and 3 contain all changes

(c) Name of carrier or name of agent issuing tariff.

Whenever two or more carriers join in a through rate the names of all such carriers must be shown. The name of a carrier must be the same as that appearing in the carrier's certificate (or application if no certificate has been issued).

728 If the carrier is not a corporation, and a trade name is used, the name of the individual or partners must precede the trade name.

Example:

John Doe and William Doe
doing business as
A. B. C. Transportation Co.

Whenever two or more carriers join in a through rate, authority by means of proper power of attorney or concurrence, as provided in rules 10 and 11 of section 3, must be given the agent or carrier publishing the tariff.

(d) A brief description of the territories in which, or points from and to or between which, the tariff applies.

(e) Date of issue and date effective.

(f) Name, title, and street address of officer or agent by whom tariff is issued.

Rule 3. Tariffs shall contain in the order named

(a) Table of contents, arranged in alphabetical order showing the number of the page on which each subject may be found. If a tariff contains so small a volume of matter that its title page or interior arrangement plainly discloses its contents, the table of contents may be omitted.

(b) A complete index of all commodities on which specific rates are named therein, together with reference to the page or items in which they are shown. No index need be shown in tariffs

of less than 5 pages or if all the rates to each destination are alphabetically arranged by commodities.

(c) Explanation of all abbreviations, symbols, and reference marks used in the tariff.

(d) When a tariff names rates by classes, a classification of articles must be published in the tariff or in a separate tariff. When a classification is published in a separate tariff, reference must be made thereto on the title page of the rate tariff as follows:

> Governed, except as otherwise provided herein, by the [here name] classification [show issuing agent] MF–I. C. C. No. — (or I. C. C. No. —), supplements to or successive issues thereof.

All carriers shown as originating carriers in a rate tariff which is governed by a separate classification must be named as participating carriers in such separate classification.

(e) Table of rates.—All rates must be explicitly stated in cents or in dollars and cents, per 100 pounds, per mile, per hour,
729 per cubic foot, per ton of 2,000 pounds, per ton of 2,240 pounds, per truckload (of stated amount), or other definable measure.

Where rates are stated in amounts per package or bundle definite specifications of the packages or bundles must be shown.

Tariffs containing tables of rates based on distances from point of origin to destination must show the mileages or indicate a definite method by which such mileages shall be determined.

(f) Carriers or their agents may not publish class or commodity rates which duplicate or conflict with rates published by or for account of such carriers.

Rule 4. Commodity rates

Commodity rates may be published on articles in stated truckload or less-than-truckload quantities and, if so published, shall take precedence over class rates.

Rule 5. Tariff changes

(a) Rates, charges, and classifications which have been filed with the Commission must be allowed to become effective and remain in effect for a period of at least 30 days before being changed, canceled, or withdrawn, unless otherwise authorized by the Commission.

(b) All tariffs, supplements, and revised pages shall indicate changes from preceding issues by use of the following symbols:

♦ or (R) to denote reductions.
◆ or (A) to denote increases.
▲ or (C) to denote changes, the result of which is neither an increase nor a reduction.

The proper symbol must be shown directly in connection with each change.

Rule 6. Posting regulations

Each carrier must post and file at each of its stations or offices at which an exclusive agent is employed all of the tariffs or schedules applying from, or at, such station or office and must also post and file at its principal place of business all of its tariffs or schedules. All tariffs or schedules must be kept available for public inspection or examination at all reasonable times.

Section 2. Contract Carrier Schedules

Rule 7. Publication, filing, and posting of schedules

(a) Schedules must be filed by contract carriers.—Contract carriers shall, under section 218 of the Motor Carrier Act, 730 1935, file only schedules, which schedules shall conform to these regulations. (This should not be confused with the requirement contained in Ex Parte No. MC–9, Filing of Contracts by Contract Carriers, 2 M. C. C. 55, that copies of contracts shall be filed under section 220 (a).)

(b) Agency or joint schedules not permitted.—Schedules of minimum rates or charges shall be published and filed in the name of the individual carrier performing the transportation service subject to such rates or charges. Schedules may not be filed in the name of an agent, nor may contract carriers participate by concurrence in rates named in any schedule filed by another such carrier.

(c) Schedules must contain all relevant provisions.—Schedules shall contain all of the minimum rates and charges, and also the rules and other provisions applicable to services covered thereby; and reference shall not therein be made to other publications for any provision affecting the rates or charges (or the method of applying them), except that, after having secured express authority from this Commission to do so, carriers may include in schedules naming rates based on distances reference to a separate publication on file with this Commission containing such distances.

(d) Number of copies filed.—Issuing carriers shall file with the Commission three copies of each schedule, supplement, or revised

page of a schedule. All copies shall be included in one package accompanied by a letter of transmittal (in duplicate if a receipt is desired) listing the publications enclosed, which shall be addressed to the Interstate Commerce Commission, Bureau of Motor Carriers, Section of Traffic, Washington, D. C. All postage or other charges must be prepaid.

(e) Posting of schedules.—Schedules shall be posted in the same manner as is provided in rule 6 of section 1.

(f) Special permissions.—No deviation from the regulations relative to publication and filing of schedules will be permitted, except that the Commission may in its discretion grant specific authority for waiving any of such regulations in response to an application presented in the manner set forth in rule 9 of section 3, if such application appears to present sufficient justification for such authority.

Rule 8. Form and contents of schedules

(a) Form and manner of preparation.—All schedules and supplements thereto shall be in book, pamphlet, or loose-leaf form, of size 8 by 11 inches. They shall plainly printed, mimeographed, planographed, stereotyped, or reproduced by other similar durable process on paper of good quality. Schedules and supplements thereto filed and posted shall contain no alteration or erasure of the contents of such publication. A
731 margin of not less than five-eighths of an inch without any printing thereon shall be allowed at the binding edge of each schedule or supplement.

(b) Required notice.—Except as otherwise provided herein or unless otherwise authorized by the Commission, all schedules and supplements thereto which supersede rates and charges previously published and filed with this Commission and which result in reductions in previously filed rates and charges shall be filed and posted at least 30 days prior to the effective date thereof.

(c) Title page.—Each schedule submitted for filing shall show on the upper right-hand corner of the front cover or title page the MF-I. C. C. number of the schedule. All schedules shall be numbered consecutively beginning with the MF-I. C. C. number next higher than the last number used on a publication of rates, charges, or rules filed by the same carrier with this Commission. If the issuing carrier shall have previously filed with this Commission no publication of rates, charges, or rules, the first schedule issued shall bear MF-I. C. C. No. 1 and subsequent publications shall be numbered consecutively. Schedules which supersede publications previously filed shall indicate the cancelation

of the superseded publication or publications in the manner shown in rule 2 (a) of section 1.

(d) Name of carrier.—The name of the carrier issuing the schedule shall be shown in the upper central portion of the title page and such name shall be the same as that appearing in the carrier's permit (or application if no permit has been issued). If the carrier is not a corporation and a trade name is used, the name of the individual or partners shall precede the trade name in the manner shown in rule 2 (c) of section 1. Following the carrier's name there shall be shown the permit number or, if the application shall have not been decided, the docket number of the carrier's application for a permit.

(e) Territory served.—On the title page of the schedule, immediately under the carrier's name and permit or docket number shall be shown a brief description of the territories in which, or points from and to which, the minimum rates or charges named in the schedule will apply.

(f) Issued and effective dates.—Under the territorial description, on the left-hand side of the title page, the date of issue shall be shown; and on the right-hand side, opposite the date of issue, the effective date shall be shown.

(g) Issuing officer.—At the bottom of the title page, under the issued and effective dates, there shall be shown the name, title, and street address of the individual or the officer by whom the schedule is issued. The title "Agent" should not be used.

(h) Supplements.—Supplements shall be numbered consecutively beginning with number one, the supplement number being placed in the upper right-hand corner of the title page.
732 Underneath the supplement number shall be shown the MF-I. C. C. number of the schedule amended thereby. When a supplement cancels a previous supplement (or the schedule itself), the cancellation notice shall be shown in the manner prescribed in rule 2 (b) of section 1.

(i) List of parties with whom carrier has contracts.—At the top of the page immediately following the title page shall be shown the name and address of each party with whom carrier has a contract and for whom property is transported under the provisions of the schedule.

(j) Table of contents.—Following the list of contracting shippers shall be shown a table of contents arranged in alphabetical order indicating the number of the page on which each subject may be found. If the schedule contains so small a volume of matter that its title page or interior arrangement plainly discloses its contents, the table of contents may be omitted.

(k) Index of commodities.—A complete index of all the commodities on which rates and charges are shown in the schedule shall follow the table of contents and shall indicate the page number on which rates for each commodity will be found. If no table of contents appears, the index of commodities shall be shown immediately after the list of contracting parties. If the number of commodities involved is small, no index need be shown in a schedule, provided the commodities are arranged in alphabetical order in the tables of minimum rates and charges.

(l) Not used.

(m) Index of points.—When a schedule names minimum rates or charges from and to specific points, an index of the points, together with the states in which they are located, shall be shown immediately following the index of commodities, with reference to the page on which the various points will be found in the table of minimum rates or charges.

(n) Abbreviations and symbols.—When abbreviations, symbols, or reference marks are used in a schedule, they shall be explained on each page on which they appear, except that, where the same abbreviation, symbol, or reference mark is used throughout the schedule with the same explanation, this information may be shown under a general explanation following the index of points.

(o) Rules.—Any rules or other provisions affecting the application of the minimum rates or charges shall be shown following the general explanation of abbreviations, symbols, and reference marks and preceding the tables of minimum rates or charges. Each rule shall be given a separate number.

(p) Tables of minimum rates or charges.—The tables of minimum rates or charges shall be shown immediately following
733 the rules. The commodities on which the rates or charges apply shall be shown on the same page on which the rates or charges are published or there shall be shown on such page a statement of the page or item containing a list or description of such commodities. Minimum rates or charges shall be published on only such commodities and from and to only such points as are included in actual contracts for transportation. Tables of minimum rates or charges shall be arranged alphabetically by points of origin and destination, except that, if it is desired to group points by states, they may be arranged in alphabetical order by states, the points in each state also being shown in alphabetical order. The minimum rates or charges shall be stated in cents or in dollars and cents per 100 pounds, per mile, per hour, per cubic foot, per ton of 2,000 pounds, per ton of 2,240 pounds, per truckload (of stated amount), or other definable measure.

Schedules shall clearly show the points from and to which the minimum rates and charges apply, or indicate briefly by territorial description the territory within which they apply. If minimum rates or charges are determined by use of distances, schedules shall show the distances from and to the points from and to which the minimum rates or charges apply, or shall indicate a definite method by which the distances shall be determined (see rule 7 (c) of this section).

(q) Changes in minmum rates or charges.—Minimum rates or charges which have been filed with the Commission shall be permitted to become effective and remain in effect for a period of 30 days before they may be reduced by the publication and filing of a new schedule or supplement. Schedules or supplements thereto which do not reduce the minimum rates or charges formerly filed with the Commission may become effective not earlier than the date on which they are received by the Commission, but a specific effective date must be shown which shall not be prior to the effective date of rates or charges previously filed having the same application. Changes in minimum rates or charges appearing in schedules shall be indicated in the manner prescribed in rule 5 (b) of section 1.

Section 3. Miscellaneous Rules and Forms

Rule 9. Applications for special permission

(a) The Motor Carrier Act, 1935, authorizes the Commission in its discretion and for good cause shown to permit changes in rates on less than statutory notice, and also to permit departure from the Commission's regulations. The Commission will exercise this authority only in cases where actual emergency and real merit are shown. Desire to meet the rates of a competing carrier that
734 has given statutory notice of change in rates will not of itself be regarded as good cause for permitting changes in rates or other provisions on less than statutory notice. Clerical or typographical errors in tariffs constitute good cause for the exercise of this authority, but every application based thereon must plainly specify the error together with a full statement of the attending circumstances and must be presented with reasonable promptness after issuance of the defective tariff, supplement, or revised page.

(b) When a formal order of the Commission requires publication on a stated number of days' notice, a request addressed to the Bureau of Motor Carriers for authority to file on less notice will not be granted. In any such instance a petition for modification of the order should be filed on the formal docket.

(c) Applications for permission to establish rates, rules, or other provisions on less than statutory notice, or for waiver of the provisions of this Tariff Circular must be made by the carrier or agent that holds authority to file the proposed publication. If the application requests permission to make changes in joint tariffs, it must state that it is filed for and on behalf of all carriers parties to the proposed change.

(d) Two copies of applications (including amendments thereto and exhibits made a part thereof) shall be addressed to the Interstate Commerce Commission, Bureau of Motor Carriers, Washington, D. C. An additional exact copy shall be addressed to the office of the District Director, Bureau of Motor Carriers, Interstate Commerce Commission, of the district in which the main office of the applicant carrier or publishing agent is located. The application shall indicate that an exact copy including exhibits has been furnished the district office.

Applications shall be made on paper 8 by 10½ inches, shall be in substantially the form shown hereinbelow, and shall give all the information required by this rule together with any other pertinent facts. They shall be numbered consecutively and must bear the signature of the carrier or its agent or officer, specifying title.

(Address)

(Date)

To the INTERSTATE COMMERCE COMMISSION,
BUREAU OF MOTOR CARRIERS,
Washington, D. C.

Application No. ——

——————, by ——————, for and
(Name of carrier) (Name of officer, specifying title)
on behalf of all carriers parties to its Tariff MF-I. C. C. No. —,* does hereby petition the Interstate Commerce Commission that he [it] be permitted, under Section 217 of the Motor Carrier Act, 1935, to put in force the following tariff provisions to become effective —— days after the filing thereof with the Interstate Commerce Commission:

——————————————————————————
(Here show matter as directed by section (e), paragraph (1) of this rule)

Your petitioner further represents that the said [state whether rates, charges, classification ratings, or other provisions] above mentioned will be published in [here show matter as directed by section (e), paragraph (2) of this rule].

* If reference to tariff or tariffs does not exactly designate carrier involved, other methods of designating carrier should be employed.

(Here state matter as directed by section (e), paragraph (3) of this rule)

(Here state matter as directed by section (e), paragraph (4) of this rule)

(Here state fully matter as directed by section (e), paragraph (5) of this rule)

(Here set forth the justification as directed by section (e), paragraph (6) of this rule)

(Name of carrier)

By ---
(Name and title)

Verification:[9]

The above statement was subscribed and sworn to before me this ------ day of --------, 19---.

(Notary public)

When the application is made by an agent, appropriate change should be made in the introductory and closing paragraphs of this form.

(e) Applications shall show the following information:

(1) The proposed tariff provisions shall be set forth clearly and completely. An accompanying exhibit may be used if identified by letter, such as Exhibit A, and so referred to in the application. If the proposed provisions consist of rates, all points of origin and destination must be shown or definitely indicated; if permission is sought to establish a rule, the exact wording of the proposed rule must be given.

(2) The application shall show the tariffs and MF–I. C. C. numbers of the publications in which the proposed rates, ratings, rules, or other provisions will be published. If publication is to be made in supplements to tariffs already referred to, this fact shall be shown.

(3) The application shall set forth the rates or tariff provisions which it is desired to change. Where the matter to be shown is voluminous or for other reasons difficult of presentation, it
736 may be included in an accompanying exhibit, properly identified and referred to in the application. Reference shall be made by MF–I. C. C. number and supplement number to the tariffs or supplements in which rates or provisions to be superseded are published. If such provisions are published in numbered items or other units, reference shall be made thereto by number, or, if not so published, the pages of the publication on which the provisions

[9] Only the original need be executed.

appear shall be shown. The extent to which cancellations will be made must be definitely indicated.

(4) The application shall state the names of carriers known to maintain competitive rates, charges, classification ratings, or rules between the same points or points related thereto, together with the MF-I. C. C. numbers of the tariffs and supplements thereto containing such provisions.

(5) The application shall state whether such carriers have been advised of the proposed rates, charges, classification ratings, or rules and whether they have been advised that it is proposed to establish such provisions on less than statutory notice. If competitive carriers have expressed their views in regard to the proposed provisions, a brief statement of their views shall be given.

(6) The application shall state the special circumstances or unusual conditions which are relied upon as justifying the requested permission together with any related facts or circumstances which may aid the Commission in determining whether the requested permission is justified. If permission to establish provisions on less than statutory notice is sought, the petitioner shall state why the proposed provisions could not have been established upon 30 days' notice.

(f) If the authority granted by special permission is used, it must be used in its entirety and in the manner set forth in the order of special permission. If it is not desired to use all of the authority granted and less or more extensive or different authority is desired, a new application complying with the provisions of this rule in all respects and referring to the previous permission must be filed.

Rule 10. Powers of attorney

(a) Whenever a carrier desires to give authority to an agent to publish and file tariffs and supplements in which such carrier participates, this may be accomplished by issuing an appropriate power of attorney either in favor of an individual or of a corporation (not a carrier) which has charter power to publish and file tariffs for common carriers of property by motor vehicle. The forms which follow are to be used. Existing powers of attorney authorizing an individual to act as agent, which are not otherwise objectionable, need not be reissued merely to comply with
737 the form prescribed in paragraph (b). Powers of attorney filed after 120 days from the effective date hereof must conform with this rule.

(b) The following power of attorney form shall be used in appointing an individual to act as agent.

Power of attorney

MFXA2 No. --
Cancels MFXA- No. --
[Name of carrier]
[Post office address]
----------, 19--

Know all men by this instrument:

That, on the ---- day of ----------, 19--, ----------, (See note 1) a common carrier of property by motor vehicle, does (do) hereby make and appoint ---------- (Name of principal agent) attorney and agent, to publish and file for such carrier freight rate tariffs and supplements thereto, as permitted or required of common carriers of property by motor vehicle under authority of the Motor Carrier Act, 1935, and the regulations of the Interstate Commerce Commission issued pursuant thereto, and does (do) hereby ratify and confirm all that said attorney and agent may lawfully do by virtue of the authority herein granted and does (do) hereby assume full responsibility for the acts and failure to act of said attorney and agent.

And, further, that ---------- (See Note 1) does (do) hereby make, and appoint ---------- (Name of alternate agent) alternate attorney and agent to do and perform the same acts and exercise the same authority granted herein to ---------- (Name of principal agent) in the event and only in the event of the death or disability of ---------- (Name of principal agent).

Signed ----------

Duplicate mailed to ----------, Agent.

NOTE 1.—In the blank space for the name of the carrier, there shall be shown, if the carrier be an individual, the individual name followed by the trade name, if any. If the carrier be a partnership, the correct names of all partners must be given, followed by the trade name, if any. If the carrier be a corporation, the correct corporate name must be used. (See Note, 2.)

NOTE 2.—The power of attorney shall be signed only with individual name of the carrier if the carrier be an individual and shall be signed by all of the partners individually, if a partnership. If the carrier be a corporation, the power of attorney shall be signed by the president or vice president, attested by the secretary of the corporation, and the corporate seal affixed. In all cases the name of the carrier shall be identical with the name as it appears in the certificate of convenience and necessity issued by the Commission, or, in the event that such certificate shall not have been issued, the name of the carrier shall be identical with the name appearing in the application for such certificate.

738 (c) The following power of attorney form shall be used in appointing a corporation (see paragraph (a) hereof) to act as agent:

Power of attorney

MFXA3 No. --
Cancels MFXA- No. --
[Name of carrier]
[Post office address]
----------, 19--.

Know all men by this instrument:

That, on the ---- day of ----------, 19--, ----------,
(See paragraph (b), Note 1)
a common carrier of property by motor vehicle, does (do) hereby make and appoint ---------- attorney and agent to
(Name of corporation)
publish and file for such carrier freight rate tariffs and supplements thereto, as permitted or required of common carriers of property by motor vehicle under authority of the Motor Carrier Act, 1935, and the regulations of the Interstate Commerce Commission issued pursuant thereto and does (do) hereby ratify and confirm all that said attorney and agent may lawfully do by virtue of the authority herein granted and does (do) hereby assume full responsibility for the acts and failure to act of said attorney and agent.

Signed ----------

Duplicate mailed to ----------, Agent.

(d) An official or an employee of a corporation (see paragraph (a) of this rule) may not act as agent when such corporation acts as agent, unless otherwise authorized by the Commission.

(e) A corporation (see paragraph (a) of this rule) accepting powers of attorney making such corporations an attorney and agent shall issue tariffs in the name of the corporation as agent. At the bottom of the title page of each publication filed by the corporation as agent shall be shown the name and title of the official of the corporation who has been appointed by such corporation to handle tariff matters with the Commission.

A corporation (see paragraph (a) of this rule) acting as a publishing agent under powers of attorney shall forward to the Commission a certified minute of the meeting of the board of directors of such corporation showing the name and title of the official who has been appointed to handle all tariff matters with the Commission.

(f) Powers of attorney authorized by this rule, if executed without modification, confer unlimited authority to publish local rates for the carrier issuing the power of attorney and to publish joint rates for such carrier and such other carriers as shall have issued the necessary authority. If it is desired to limit the authority granted to the agent, the form may

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be modified by adding at the end of the first paragraph the statement: "This authority is restricted to the filing of the publications or types of publications set forth below," and by clearly stating immediately thereafter the extent of the authority granted. The instrument may limit the authority of the agent to publication of rates from points on the carrier's lines only, or to points on its lines only, or may limit the authority granted to publication of either local or joint rates. The authority granted may be restricted, also, to publication of either class or commodity rates, but it may not be limited to publication of rates on a particular commodity or to publication of specifically named rates.

If it is desired to give to an agent authority for the publication of a classification, a classification exceptions tariff, or a rules tariff, only, the form may be modified by omitting from line four, the words "freight rate tariffs" and substituting therefor the word or words, "classification," "classification exceptions tariffs" or "rules tariffs," or the instrument may be so modified as to authorize the publication of any or all of such tariffs, including rate tariffs. If it is desired to limit the authority granted to publication of a particular tariff or tariffs, this may be done by giving a sufficiently accurate description of the title page of each tariff to identify it and by showing the MF–I. C. C. number, if known. If it is intended that the authority granted shall include reissues of specifically named tariffs, that fact must be made clear by adding after the designation of the tariff, "or successive issues thereof."

(g) Powers of attorney shall be printed on good paper of durable quality, 8 by 10½ inches in size, and shall be signed as indicated in note 2, page 12. Each power of attorney shall be given a form and serial number. The form and serial numbers shall be shown on the upper right-hand corner and immediately thereunder shall be shown the form and number of the power of attorney, if any, which is canceled thereby. If the instrument to be canceled contains more authority or is broader in scope than the new instrument, such new instrument must bear an effective date at least 60 days after the date on which it is received by the Commission. When the new instrument is broader in scope than the instrument which is to be canceled, no notice is required. The term "freight rate tariff" as used in this rule means not only rate tariffs but all other freight publications which in any way affect the value of the service or the measure of the charge. Each instrument shall show, under the serial number, the post office address of the person or persons issuing it and the date of issue. The instrument shall also show, in the lower left-hand corner, the name, title, and address of

the person or corporation to whom the duplicate is sent.

740 (h) All instruments must be prepared in triplicate. Except when there is specific instruction in individual rules to send originals to an agent, the original of the instrument shall be filed with the Commission, the duplicate sent to the agent to whom such authorization is directed, and the third copy retained by the issuing carrier.

(i) Powers of attorney may not contain authority to delegate to another the power thereby conferred. In giving authority to an agent to publish and file rates for the carrier by whom such authority is issued, care must be taken to avoid duplicating to two or more agents authority which, if used, would result in conflicting rates or other provisions.

(j) When a power of attorney is issued to an individual to act as agent (see paragraph (b) of this rule), such instrument shall name an alternate agent to act in the event of the death or disability of the principal agent. On or before the date of filing of the first tariff or supplement by the alternate agent under the authority granted in the instrument, such alternate agent shall submit to the Commission a sworn statement setting forth the reason or reasons which justify such exercise of authority. The term "disability" as used in the instrument means resignation, permanent transfer to other duties, or other permanent absence of the principal agent, and does not mean temporary absence of the principal caused by vacation, illness, or other similar cause. After an alternate agent has once exercised the authority granted by the instrument, the principal agent may not thereafter act under that instrument.

(k) When it is desired to transfer authority from one agent to another agent, such transfer may be accomplished by filing a new power of attorney naming the agent (and alternate when necessary) thereafter to serve, which shall specifically cancel the previous power of attorney.

When a power of attorney has been issued to an individual and an alternate (see paragraph (b) of this rule), in the event of the death or disability of either the principal or alternate agent, new powers of attorney canceling the previously effective powers of attorney and naming the agent (and alternate when necessary) thereafter to serve shall be filed within 180 days. The new powers of attorney shall bear no effective date. The originals thereof shall not be sent direct to the Commission, but shall be forwarded to the new agent, which agent after all the necessary instruments have been secured, shall file the originals with the Commission all at one time. Such powers of attorney will become effective upon the date they are received by the Commission.

(l) Not used.

(m) When a new agent is appointed, or when an alternate agent assumes the duties of the principal agent, the new agent, 741 immediately upon receipt of necessary authority, or the alternate agent, upon death or disability of his principal, shall issue a supplement to each of the effective tariffs issued by the agent superseded, which shall bear on its title page no effective date, but which shall contain a statement reading substantially as follows: "On and after [show here, in the case of a new agent, the date on which authorities are filed with this Commission; or in the case of an alternate agent, the date on which the principal ceased to act] this publication shall be considered as the issue of [show here name of new agent or the alternate acting as such]." In the case of a new agent, such supplement shall also contain a list of participating carriers giving reference to the new authorities. If tariffs issued by the new agent will be numbered in a different MF–I. C. C series from those of the former agent, supplements filed by the new agent to tariffs issued by the former agent shall show in connection with MF–I. C. C. numbers, that they are in the series of the former agent.

(n) A power of attorney may be revoked upon not less than 60 days' notice to the Commission by filing a notice of revocation with the Commission, serving at the same time a copy thereof on the agent in whose favor such power of attorney was executed. Such notice shall not bear a separate serial number, but shall specify the form and number of the power of attorney to be revoked, shall name the agent (and alternate agent when form MFXA2 is being revoked) in whose favor the power of attorney was executed, shall specify a date upon which revocation is to become effective, which must be not less than 60 days subsequent to the date of its receipt by the Commission, and shall be executed in the following manner on paper of good quality, size 8 by 10½ inches:

Revocation notice

[Name of carrier]
[Post office address]
----------, 19--.

Know all men by this instrument:

Effective ----------, 19--, power of attorney MFXA- No. --, issued by ---------- [name of carrier] in favor of ---------- [here show name of agent (and alternate agent when form MFXA2 is being revoked) in whose favor power of attorney was executed], is hereby, cancelled and revoked.

(Name of carrier)

By ----------
(Title)

742 [If a corporation]
Attest:
----------, Secretary.
[Corporate Seal]
Duplicate mailed to ---------- at ----------
Date duplicate mailed ----------.

Rule 11, Concurrences

(a) The following forms shall be used in giving to carriers concurrences in tariffs which are issued and filed by such carriers or their agents and in which the carriers giving concurrences are participants. The provisions of paragraphs (g) and (h) of Rule 10 will apply also to concurrences. If two or more carriers execute powers of attorney authorizing an agent to publish joint rates for them, it will not be necessary for those carriers to exchange concurrences with each other as to the joint tariffs issued by that agent under that authority.

(b) Form MFXC2 shall be used in giving concurrence in a particular tariff that is issued and filed by another carrier. The original of form MFXC2 shall be forwarded to the carrier issuing the tariff and shall by such carrier be transmitted to the Commission with the tariff. This form when not restricted will serve as continuing evidence of participation in the tariff described in the concurrence and in all supplements to and successive issues thereof. If reference to successive issues be stricken out, a new concurrence will be required for each successive issue of the tariff. Except as provided above, this form shall not be qualified in any way but must evidence concurrence in all rates, rules or other provisions contained in the tariff publication named therein.

Concurrence

MFXC2 No. --
Cancels MFXC- No. --
[Name of carrier]
[Post office address]
---------- 19--

To the INTERSTATE COMMERCE COMMISSION,
BUREAU OF MOTOR CARRIERS,
Washington, D. C.

This is to certify that [name of carrier giving concurrence: See Rule 10 (b) Note 1] assents to and concurs in the publication and filing of the freight rate tariff described below, filed by [show name of carrier to whom concurrence is given], together with supplements thereto and successive issues thereof, and that such concurring carrier hereby makes itself a party thereto and bound thereby, insofar as such tariff names rates between points

on the lines or routes of [show name of carrier to whom
743 concurrence is given], on the one hand, and points on the lines or routes of [show name of carrier giving concurrence], on the other; or rates between points on the lines or routes of [show name of carrier to whom concurrence is given] on the one hand, and points on the lines or routes of other carriers parties to such tariff, on the other, in connection with which [show name of carrier giving concurrence] acts as intermediate line, until this authority is revoked by formal and official notice of revocation filed with the Interstate Commerce Commission and sent to the carrier to which this concurrence is given.

(Here give an exact description of the title page of the tariff, including the name of the issuing carrier, the MF-I. C. C. number, and dates on which issued and effective)

Issued by [name and title of officer shown as issuing tariff].

Signed _____

(c) If general concurrence be given by a carrier in tariffs issued by another carrier or its agent, naming rates from or to points on its lines or over its lines, form MFXC3 shall be used. Form MFXC3 may be executed as shown, when it will authorize publication of rates for the concurring carrier from and to points served by such carrier as well as from and to points served by other carriers where the concurring carrier acts as intermediate line. If it is desired to limit the authority granted to exclude publication of rates in connection with which the concurring carrier would act as either origin, intermediate, or destination line, the form may be modified to that extent by substituting the words "from — to" for the words "between — and" or by use of other appropriate language to effect the modification authorized. When authority is given an agent to publish rates for a carrier participating under authority of a concurrence to another carrier for whom such agent acts, care must be exercised that the rates published for the concurring carrier do not exceed the scope of the authority given.

Concurrence

MFXC3 No. __
Cancels MFXC_ No. __
[Name of carrier]
[Post office address]
_____, 19__

To the INTERSTATE COMMERCE COMMISSION,
BUREAU OF MOTOR CARRIERS,
Washington, D. C.

This is to certify that [name of carrier giving concurrence: See Rule 10 (b) Note 1] assents to and concurs in the pub-

lication and filing of any freight rate tariff or supplement thereto, which [name of carrier to whom concurrence is given] or such carrier's agent may publish and file, and in which
744 the said [name of concurring carrier] is shown as a participating carrier, and that such concurring carrier hereby makes itself a party thereto and bound thereby insofar as such tariff names rates between points on the lines or routes of [show name of carrier to whom concurrence is given], on the one hand, and points on the lines or routes of [show name of carrier giving concurrence], on the other; or rates in connection with which [show name of carrier giving concurrence] acts as intermediate line between points on the lines or routes of [show name of carrier to whom concurrence is given], on the one hand, and points on the lines or routes of other carriers parties to such tariff, on the other, until this authority is revoked by formal and official notice of revocation filed with the Interstate Commerce Commission and sent to the carrier to which this concurrence is given.

Signed _____

Duplicate mailed to _____, at [show complete address].

(d) A concurrence may be revoked upon not less than 60 days' notice to the Commission by filing a notice of revocation with the Commission, serving at the same time a copy thereof on the carrier to which such concurrence was given. Such notice shall not bear a separate serial number, but shall specify the form and number of the concurrence to be revoked, shall name the carrier in whose favor issued, and shall specify a date upon which revocation is to become effective, which must be not less than sixty days subsequent to the date of its receipt by the Commission. The revocation notice shall be as follows:

Revocation notice

[Name of carrier]
[Post office address]
_____, 19__.

To the INTERSTATE COMMERCE COMMISSION,
BUREAU OF MOTOR CARRIERS,
Washington, D. C.

Effective _____, 19____, concurrence form MFXC-No. __, issued by _____ [name of carrier] in favor of

---------- [here show name of carrier in whose favor concurrence was issued] is hereby canceled and revoked.

---------- (Name of carrier)

(Sig.) ----------

Duplicate mailed ---------- [name and title of officer].
---------- [name of carrier].
---------- [address].
---------- [date].

744a (e) When a power of attorney or concurrence is revoked, corresponding revision of the tariff or tariffs should be made effective upon statutory notice not later than the effective date stated in the notice of revocation. In the event of failure to so revise the applicable tariff or tariffs, the rates in such tariff or tariffs remain applicable until lawfully canceled.

(f) In giving concurrences care must be taken to avoid duplicating authority to two or more carriers which, if used, would result in conflicting rates or rules.

746 Before Interstate Commerce Commission

Before Interstate Commerce Commission

Investigation and Suspension Docket No. M-247

Proportional rates between Chicago and Wisconsin points

Order

September 13, 1939

Upon further consideration of the record in the above-entitled proceeding, and good cause appearing therefor:

It is ordered, That the order heretofore entered in this proceeding on July 29, 1939, effective October 10, 1939, upon not less than one day's notice, be, and it is hereby, amended so as to postpone said effective date to November 10, 1939, upon not less than one day's notice.

It is further ordered, That in all other respects, said order of July 29, 1939, shall remain in full force and effect.

By the Commission.

[SEAL] W. P. BARTEL,
Secretary.

748 Before Interstate Commerce Commission

Investigation and Suspension Docket No. M-247

Proportional rates between Chicago and Wisconsin points

Order

November 7, 1939

Upon further consideration of the record in the above-entitled proceeding, and of the fact that respondents have voluntarily postponed the effective date of the tariffs herein involved until December 1, 1939, and good cause appearing therefor:

It is ordered, That the order heretofore entered in this proceeding on July 29, 1939, as amended by order of September 13, 1939, effective November 10, 1939, upon not less than one day's notice be, and it is hereby, amended so as to postpone said effective date to December 1, 1939, upon not less than one day's notice.

It is further ordered, That in all other respects, said order of July 29, 1939, shall remain in full force and effect.

By the Commission.

[SEAL] W. P. BARTEL,
Secretary.

750 [Secretary's certificate omitted in printing.]

754 Before Interstate Commerce Commission, Washington, D. C.

I. & S. Docket No. M-247

IN THE MATTER OF PROPORTIONAL RATES BETWEEN CHICAGO AND WISCONSIN POINTS

Petition for reconsideration

Come now the respondents herein and the interveners, Freight Consolidators and Forwarders Institute, and respectfully move and petition the entire Commission to reconsider, reverse and vacate the report and order herein of Division 5, and for grounds therefor assign error in said report and order as follows:

1. The report errs in refusing to follow the controlling decisions of the entire Commission and of the courts, which require discontinuance of a suspension proceeding in the absence of any opposi-

tion by any person, carrier or shipper, or of any evidence
755 which shows that the suspended rates were unreasonable, unjust, discriminatory, or otherwise unlawful.

2. The report errs in failing to find as required by the law the controlling decisions of the entire Commission and the undisputed evidence that the suspended rates are true proportional rates lawfully naming respondents' charges for its participation in a joint movement of through traffic by them and common carriers not subject to the Interstate Commerce Act and in finding contrary to the law and the evidence that:

2.1. "It is questionable whether the proposed rates may properly be considered as true proportional rates" (Sheet 5) and

2.2 "It is also questionable whether traffic which is consolidated by the forwarder en route is through traffic" (Sheet 6).

3. The report errs in failing to find as required by the law and the undisputed evidence that the suspended rates are just, reasonable and highly remunerative to respondents and in finding contrary to the law and the undisputed evidence that:

3.1. "The most serious question raised in this proceeding is whether the proposed rates will be reasonably compensatory" (Sheet 7).

3.2. "The proposed rates are very materially lower than the rates in effect generally * * *" (Sheet 7).

3.3. "It is not apparent that any item of expense which is present in connection with the ordinary less-carload shipment is not present in connection with traffic moving under the proposed rate * * *" (Sheet 7).

756 3.4. "It may well be that the expense of handling this class of traffic will actually be greater than that of handling local shipments of the same amounts because of the additional accounting and policing necessary to establish the fact that shipments are entitled to the proportional rate" (Sheet 7).

4. Report errs in failing to find as required by the law, controlling decisions of the entire Commission and the undisputed evidence that the suspended charges do not discriminate against, unduly prefer nor unduly prejudice any person, locality or description of traffic and in finding contrary to the law and the undisputed evidence:

4.1. "The conclusion is inescapable that the rates here proposed are in their true nature special rates for a particular type of traffic" (Sheet 8).

5. Report errs in failing to find as required by the law and the undisputed evidence that the suspended rates are indispensable to enable respondents to continue to carry a large volume of traffic

which they have developed and handled by co-ordinated service over a long period of time and that the cancellation of such rates would grievously and irreparably injure them and impair their carrier service and in finding contrary to the law and the undisputed evidence that:

5.1. "The record is not convincing that * * * respondent would lose all of the revenue they now receive on (the) traffic * * *" (Sheet 8).

5.2. "The figures presented as to the ability of the for-
757 warders to pay higher charges to respondents without increase in the rates charged shippers are not persuasive" (Sheet 8).

5.3. "Whether or not respondents will lose all or a substantial portion of the traffic * * * does not seem to us to be so important as is the question whether we would be abrogating long-established principles and transportation practices in connection with rate making, and would be encouraging other carriers as well as respondents to establish preferential rates in an effort to court favor with the larger shippers" (Sheet 9).

5.4. "Failure to approve the proposed rates will doubtless result in little, if any, diminution of the traffic. Some of the traffic may conceivably go to other forms of transportation, but the hauls of motor carriers on the traffic remaining will probably be somewhat longer than they would secure under the proposed rates" (Sheet 9).

6. The report errs in finding contrary to the law upon extraneous considerations not of record that:

6.1. "Approval (of the suspended rates) would tend to perpetuate such all-commodity rates applicable on practically every commodity without regard to its classification rating or individual transportation characteristics" (Sheet 6).

6.2. "It is probable that other carriers will attempt to meet the situation by similarly undercutting their local rates. It is apparent that when this situation is brought about the carriers will be handling the same amount of freight for much less revenue, which would have the effect of exaggerating the financial straits of the carriers" (Sheet 7).

6.3. "In view of the unfavorable financial condition of the
758 transportation industry as a whole, we must regard without doubt any proposal to establish a practice which will probably initiate a cycle of rate reduction with no corresponding increase in the total tonnage transported by the industry" (Sheet 9).

7. The report errs in failing to find as required by the law and the undisputed evidence that the suspended rates are indispensable to a necessary transport service, the withdrawal of

which would reflect grievous and irreparable injury upon smaller cities and towns and the shippers and receivers of freight there located.

Respectfully submitted.

EARL GIRARD,
FERDINAND BORN,
ROBERT E. QUIRK,
J. R. TURNEY,
Attorneys for respondents and the interveners, Freight Consolidators and Forwarders Institute.

759 Memorandum in Support of Petition

Statement

PROCEEDING

This is an investigation and suspension proceeding instituted by the Commission on its own motion and without complaint or protest by anyone. The suspended tariffs name proportional rates for the transportation of less than truckload shipments between certain mid-West Key Stations[10] (i. e., Chicago, Indianapolis, South Bend, Ft. Wayne, Muncie, and Evansville), and "off-line" points within the respective concentration or distribution area of each immediately precedes or follows where the ultimate origin or destination of such shipment is beyond such key point and such transportation, a consolidated truckload or carload consignment of which such less-than-truckload shipment is a part. At the present time the traffic involved moves on through L. T. L. rates published by the freight forwarding companies and filed with the Commission, in which the respondents concur, and the rates under suspension are identical with the divisions which the respondents now receive out of such through rates for performing the same service on the same traffic.

HEARING

No one before, at or subsequent to the hearing has protested or objected to the tariffs. A number of commercial bodies
760 and shippers and receivers of freight located at the smaller cities and towns within the areas above described appeared at the hearing and testified in support of the suspended rates. The only evidence introduced was by respondents and interveners,

[10] This phrase is used herein to designate a large commercial center at which either (a) L. T. L. shipments are concentrated into outbound truckload or carload consignments or (b) such consolidated consignments are broken up and the component L. T. L. shipments distributed as such.

which, without dispute or contradiction, showed that the suspended tariffs:

(1) Involve the transportation of interline shipments by a co-ordinated and superior rail and truck l. c. l. service, the withdrawal of which would follow cancellation of the tariffs and thereby inflict unjust discrimination upon shippers at small industrial centers and wantonly deprive respondents of a traffic and revenue indispensable to the continuance of adequate service by them; and

(2) Name just, reasonable, nondiscriminatory rates highly profitable to respondents in a proper and lawful form highly promotive of uniformity, stability and economy.

REPORT

The examiner to whom the proceeding was referred filed a report recommending that the proceeding be discontinued and the tariffs allowed to become effective. No exceptions were filed to this proposed report. However, Division 5, on its own motion, stayed the report and thereafter filed a majority report ordering the rates canceled upon grounds which will be hereafter noted. Commissioner Eastman dissented from the report.

ABSTRACT

Volume II of our opening brief is an abstract of all testimony introduced. The testimony of each witness is condensed,
761 but in the order in which it was given. The order of witnesses is in accordance with their position as parties, i. e., as respondents or interveners. To facilitate cross reference, the testimony of each witness has been paragraphed, topically, and the paragraphs consecutively numbered in bold-face type. Abstract references in this memorandum are to these numbered paragraphs. Immediately following the paragraph number, and in italics, a cross reference to the discussion of the topic in our opening brief is made by topic number of that brief.

762 Argument

1. Findings are insufficient to sustain order as a matter of law

FINDINGS

The report is signally deficient in that it fails to make any definite finding of fact to support its ultimate conclusion in the single sentence at the end of the report that "the suspended rates are unlawful." We have endeavored to set forth verbatim in

the subsections of our assignments of errors Nos. 2 to 6, inclusive, and extract all statements of the report which may have been intended to be findings upon which this ultimate conclusion is based. Assuming for the purpose of the argument of this first assignment of error that these "findings" were supported by evidence, although as will appear in the discussion of other assignments none of them is supported by a scintilla of evidence, and giving to each the strongest possible probative force to which the language used is subject, in the aggregate they make the following ultimate findings of fact:

1. It is "questionable" whether the rates are "true proportional rates."

2. There is "doubt" whether the rates will be compensatory.

3. The rates are specially designed for a particular type of shipper.

4. The record is not "convincing" that respondents will lose the traffic which the rates are admittedly designed to retain.

5. The proposed rates "tend to perpetuate all commodity rates."

763 6. The rates "may" lead to rate cutting by other carriers with the consequent evils that flow therefrom.

GROUNDS IMMATERIAL

Not a single definite or unequivocal finding is made by the report. The most that is said is that the majority of the Division entertain doubts with respect to the propriety and the providence of the proposed rates, particularly from the standpoint of the necessity upon respondents' part to publish them in order to retain their present traffic. Even if these findings were not qualified, as in fact they are, to the point of self-extinction, there is not one of them but which in the final analysis relates to business policy and judgment, the sole prerogatives of respondents' managers and wholly outside the jurisdiction of the Commission.

Suppose it were "questionable" whether the proposed rates are "true proportional rates." What of it? What section of the Motor Carrier Act confines or restricts respondents in the adjustment of their rates or in the forms or types of their tariffs to those heretofore followed by railroads? The Supreme Court has held time and again that even those carriers retain the right to adjust their tariffs and charges to meet the exigencies of their business (Texas & Pacific Ry. v. U. S., 289 U. S. 627, 636). Whether or not the rates partake of the form heretofore called "proportional rates" might be interesting to a convention of traffic compilers, but it has nothing whatever to do with the lawfulness of these tariffs. Suppose there is a "doubt" as to whether the rates are compensa-

tory or not. That question is primarily and initially for the
764 managers of the property. If there is any doubt about it, they, and not the Commission, must resolve the doubt and assume the risk. It is only when there is no doubt but that the rates are noncompensatory that they become unlawful. Again, what difference does it make that the rates are designed for a "particular type of shipper"?[11] This situation is not limited to forwarder traffic; it is applicable to many other traffics. By definition all commodity rates are specially adapted to handle the articles embraced within the commodity description and to promote its movement by carriers. They would not be published if this were not so. In exactly the same sense with which this finding is made it would also be found that every commodity rate was a special rate for the particular type of shippers who dealt in that commodity. To say that rates are designed to meet the needs of forwarders is no different from saying that grain rates are designed to meet the needs of millers or coal rates are designed to meet the needs of mining companies. There is no finding; indeed, there is and can be no claim that the rates prefer or discriminate against any other person or place or traffic. Much less is there a finding of injury resulting from such a discrimination, which is an indispensable element to a finding of unlawfulness under the Act. The last three findings express vague and chimerical fears as to the possible effect of the rates upon other carriers or upon the rate structure as a whole. Even if they were based upon realities, they would be wholly insufficient to warrant the action which the report orders. There is not a single word in the report that
765 even squints at a finding of unreasonableness, of unjustness or of unlawful discrimination, nor of any other or requisite facts which the Commission must find in order to exercise its jurisdiction to cancel the rates initiated by a carrier.

RESPONDENTS' RIGHTS

The right of a common carrier to initiate rates and to establish its own rate policies, provided such rates do not violate the provisions of the Interstate Commerce Act, has always been recognized both by the courts and by the Commission. In a proceeding of this character it is necessary to keep in mind that the Commission has no inherent power and that its authority is derived from and limited by the Interstate Commerce Act. The Commission has no power to impose on common carriers its own rate policies.

[11] From the context it clearly appears that this means forwarder traffic is a particular and distinctive type of traffic, as was found by the Commission in the Freight Forwarding Investigation (229 I. C. C. 260, l. c. 231), and of which there are relatively few shippers.

There is a real distinction between the powers and the duties of the Commission, and the rights and the duties of carriers. The Commission has no authority to condemn a particular rate or rule of a common carrier unless it is in position to find on evidence and after hearing that such a rate or rule is unreasonable, unjustly discriminatory or otherwise in violation of the Interstate Commerce Act; its right to apply a remedy depends on the existence of a wrong forbidden by the act, Interstate Commerce Commission v. Louisville & Nashville R. Co., 227 U. S. 88, 92; C. N. O. & T. P. Ry. Co. v. I. C. C., 162 U. S. 184, l. c. 197; United States v. C. M. & St. P. Ry., 294 U. S. 508, l. c. 510.

It is settled law that a common carrier may establish rates and rules which the Commission could not require it to establish. The
766 fact that in a particular instance a common carrier elects to maintain a rate lower than a maximum reasonable rate is no reason under the statute for condemning the rate unless it is shown to be unjustly discriminatory or unduly prejudicial. The law does not require a common carrier to maintain the highest rate it might justify. The carrier is free to maintain rates which are within the zone of reasonableness and which are free from unjust discrimination. The law does not condemn prejudice, preference or discrimination as such. It condemns prejudice, preference, etc., only when shown to be undue, unjust or unreasonable. Nor does the law require strict uniformity of treatment. In fact, as was stated by the Supreme Court in Texas & Pacific R. R. Co. v. I. C. C., 162 U. S. 197:

"The very terms of the statue, that charges must be reasonable, that discrimination must not be unjust, and that preference or advantage to any particular person, firm, corporation, or locality must not be undue or unreasonable, necessarily imply that strict uniformity is not to be enforced; but that all circumstances and conditions which reasonable men would regard as affecting the welfare of the carrying companies and of the producers, shippers and consumers should be considered by a tribunal appointed to carry into effect and enforce the provisions of the act."

Under the law common carriers are required to treat all shippers and descriptions of traffic alike only under like circumstances and conditions. This principle was nicely stated by the Supreme Court in I. C. C. v. B. & O. R. Co., 145 U. S. 263, where it said that under the Interstate Commerce Act common carriers

767 "are only bound to give the same treatment to all persons alike under the same conditions and circumstances, and that any fact which produces an inequality of conditions and a change of circumstances justifies an inequality of charge."

No protest by any one was filed against the suspended tariffs. No evidence of any sort was offered tending to show that the tariffs were unlawful or that the proposed rates were unjust or unreasonable.

JUSTIFICATION

As heretofore stated, the rates proposed are identical with the charges now assessed by respondents (in the form of divisions) on the particular traffic involved, which charges have been in effect for a number of years. Neither Part I nor Part II of the Act imposes on carriers the duty of justifying the lawfulness of any proposed rate unless such a rate is an increase in present rates. See, in this connection, Anchor Coal Co. v. United States, 25 Fed. (2) 462, and United States v. C. M. & St. P. Ry., supra, and Rates Between Arizona, California, New Mexico and Texas, 3 M. C. C. 505. Under the practice of the Commission in suspension proceedings the burden of procedure is assumed by the respondents. However, there is a clear distinction between the burden of procedure, which carriers assume in a suspension proceeding, and the burden of proof. In the instant case the respondents assumed the burden of procedure. They presented uncontradicted evidence which shows that the rates under suspension are not only necessary to preserve their revenues, but are reasonable and nondiscriminatory. No shipper or carrier presented any evidence in this case in opposi-
768 tion to the suspended rates. In other words, no evidence was introduced at the hearing by anyone designed to show that the suspended rates are unreasonable or otherwise in violation of the Act.

Respondents, in some degree at least, still remain the managers of their property. Upon them is the primary duty of determining what charges they will make for their service. In the absence of a statute to the contrary, they clearly have the right to insist upon the exercise of this power to the extent that it does not contravene the provisions of the Motor Carrier Act, and unquestionably that burden lies upon him who so claims to prove that their exercise of this right does contravene the act.

ERROR

The report tacitly, if not expressly, assumes that the burden is upon the respondents to justify the proposed rates. No other construction can be placed upon such phrases as "it is questionable," "it is doubtful," "the evidence is not persuasive," or "the record is unconvincing," than that the division felt that respondents had the duty of showing the affirmative of the questioned

issues. This we have seen is contrary to the controlling decisions of this Commission as well as of the courts. In the absence of any showing or of any finding with or without evidence that the proposed rates are unlawful in any respect, we submit that the proposed order is arbitrary and void upon its face and that it should be reversed and the proceeding vacated.

769 2. Form of the tariffs is lawful

THE ISSUE

The report questions the propriety of proportional rates for application to the traffic involved upon two grounds: First, upon the ground that there is no joint through movement in which the carriers subject to the Act participate, and, secondly, because the traffic involved is not through traffic, the continuity of the movement being broken by the fact that the shipment moves during a portion of the transportation as a part of a consolidated truckload or carload consignment.

THE TARIFFS

Tariffs under suspension are W. L. Myers MF-I. C. C. Nos. 138, 142, and 146, naming proportional rates [12] for the transportation of l. c. l. shipments (all freight) to or from named concentration points immediately preceding or following transportation in a truckload or carload consignment under tariffs lawfully on file with the Interstate Commerce Commission.[13] The "Metropolitan" tariff covers motor carriers and traffic moving between Chicago and points in Illinois within a radius of fifty miles thereof; the Wisconsin tariff covers motor carriers and traffic moving between Chicago and points in Wisconsin along the western shore of Lake Michigan south of Green Bay, Wisconsin; and the Indiana tariff covers motor carriers and traffic moving between South Bend, Fort Wayne, Muncie, Indianapolis, and Evansville, respectively, upon the one hand, and points within the trade area of each of the said cities, respectively, upon the other hand.[14]

770 INITIATION

The respondents have handled the traffic involved in connection with the forwarding companies for a number of years. Prior to April 1, 1936, it was done upon a contract basis, each forwarder making an individual contract with each motor carrier.

[12] Abstract, paragraph 5.
[13] Abstract, paragraph 7.
[14] Abstract, paragraphs 6, 8.

On April 1, 1936, the forwarders filed their tariffs, naming through rates, with the Interstate Commerce Commission, and respondents filed concurrences in those tariffs.[14] The charges thereafter were paid as divisions and were approximately the same as those which have prevailed prior to the Motor Carrier Act. The movement for publication of proportional rates was initiated by the respondents. As the result of considerable negotiation among themselves and with the forwarders the suspended tariffs were filed which named as proportional rates the charges which the respondents have been receiving as divisions of the through forwarder rate since April 1, 1936, and as contract compensation prior thereto.[15]

THE METHOD

The proportional rate method is simply a method of publishing as a separate rate the respondents' division of the through rate, that is, the amount out of the through rate which the respondents will receive to compensate them for their participation in the through movement. The tariffs, however, do not limit the traffic to forwarder traffic. It embraces any l. c. l. shipment, provided that shipment has moved into the concentration point or is to move from the concentration point as part of a truckload or carload consignment when the l. c. l. and the carload movements are practically continuous.[16]

771

A USUAL METHOD

The proportional rate method has been followed for many years in similar circumstances and with the approval of the Commission. There were offered in evidence a number of tariffs showing typical conditions under which similar tariffs were published embracing many different kinds of classes and commodities, in a number of which the conditions were practically identical with those under suspension, and in several of which a combination less-than-carload through movement was embraced.[17]

LAWFUL METHOD

The proportional rates under suspension are similar in their application to proportional rates which have been maintained by railroads since the creation of the Commission under the sanction and, in many instances, with the approval of the Commission. Exhibit 5 of record is a statement of numerous proportional rates which, in all essential respects, are similar to the proportional rates under suspension. Reference to a few of these rates and to certain decisions of the Commission dealing with proportional

[14] Abstract, paragraphs 3, 89.
[15] Abstract, paragraph 14.
[17] Abstract, paragraphs 15, 16, 98, 291.

rates will suffice. Railroads maintain ex-lake proportional rates on grain and iron ore from Lake Erie ports to various destinations in the east. The grain and ore reach Lake Erie ports by water either by common or by private carrier. These proportional rates are substantially lower than local rates from the same Lake Erie port to the same destination on the same traffic. The Commission approved ex-lake rates on grain in Maritime Ass'n of Boston v. Railroads, 95 I. C. C. 539, and ex-lake rates on iron in Trunk
772 Line Ex-Lake Iron Ore, 69 I. C. C. 589. In Lake Cargo Coal Rates, 101 I. C. C. 513, 126 I. C. C. 309, and in 200 I. C. C. 4, the Commission approved rates on coal from various eastern shipping points to Lake Erie ports when transhipped beyond by water, irrespective of whether the water carrier is a private carrier or a common carrier.

In West Virginia Coal & Coke Co. v. Railroads, 185 I. C. C. 211, 200 I. C. C. 182, and in American Rolling Mill Co. v. B. & O. R. Co., 173 I. C. C. 357, the Commission prescribed ex-river rates maintained by railroads from Cincinnati on coal which reached Cincinnati by private barge on the Ohio River. These proportional rates are lower than the contemporaneous local rates from Cincinnati on coal to the same destination points.

In none of the cases cited was the water carrier or its charges subject to the jurisdiction of this Commission.

In Cotton From and To Points in the Southwest, 208 I. C. C. 677, 701, 216 I. C. C. 17, the Commission approved proportional rates applicable to the concentration of cotton and cotton linters. The application of these rates are described on page 11 of Exhibit 5. The tariffs authorize the movement of cotton and cotton linters at less than carload or any quantity rates from concentration points and on cotton and linters at carload rates from concentration points in respect to less-than-carload shipments from points of origin. Page 8 of the same exhibit describes the tariff on the C. & N. W. Railway, which provides for the application of proportional rates on butter, eggs and dairy products, which move to the con-
773 centration point in less-than-carload lots and which are reshipped from the concentration points in carload lots. The record also shows that proportional rates, identical to those under suspension, are maintained from Dalias and other break-bulk points in Texas to various destinations in Texas on merchandise in any quantity, applicable on interstate traffic received at the break-bulk points in carload lots and which is reshipped from such points to the ultimate destinations in less-than-carload lots within a specified time. The exhibit refers to numerous other rates of the same general character. In Lumber from San Francisco Bay Points, 78 I. C. C. 760, the Commission approved proportional rates on lum-

ber from California ports, which had been brought to the ports by private water carriers.

FUNCTION OF PROPORTIONAL RATES

A comprehensive discussion of the efficacy and application of proportional rates is contained in Tariffs Embracing Motor Trucks, etc., 91 I. C. C. 540, 549. This case is referred to as the Starin-New Haven case. The Starin-New Haven was a water carrier operating between New York and New Haven. Certain of the traffic moved partly by railroad and partly by water under common control and arrangement for through carriage. In dealing with the proportional rates of the Starin-New Haven between New Haven and New York, which were lower than the local rates, and which proportional rates were limited to traffic moving to New Haven by motor carriers from various New England inland points, the Commission said:

"Such authority will be of no avail, however unless the
774 Starin-New Haven, in connection with this service from the inland New England points, can lawfully publish proportional rates lower than the rates which apply on local traffic from New Haven, for only by the publication of such proportional rates can it equalize and meet the through rates to southern destinations from such inland points in connection with the New Haven system. In Lumber from San Francisco Bay Points, 78 I. C. C. 760, we found justified the proposal to extend at California ports the application of proportional rail rates on lumber shipments to the East lower than the local transcontinental basis, so as to allow such rates to apply on shipments received from all water carriers, where formerly it had been restricted to shipments received at the ports only by common carriers by water filing tariffs with us. A similar tariff arrangement has long existed in connection with ex-lake ore and grain rates. In our opinion, such proportional rates are justified by the decision of the Supreme Court in Texas & Pacific Rwy. v. I. C. C., 162 U. S. 197, when it can be shown that the traffic coming from beyond to which the proportional rates apply is surrounded by and subject to substantially different circumstances and conditions than attach to the traffic originating locally at the port. In this case it is clear that the traffic which originates at Meriden, New Britain, Wallingford and Waterbury is subject to substantially different circumstances and conditions than attach to traffic originating at New Haven, because of the through rates in connection with the New Haven system from these inland points, which can only be met by the Starin-New Haven by publication of proportional rates from New Haven.

"Publication by the Starin-New Haven of proportional
775 rates from New Haven lower than the local rates and ap-

plicable on traffic originating at the inland points named will therefore be lawful, provided that the application of such rates is not confined to traffic moved from these inland points to New Haven by certain designated trucking companies. Discrimination of this character in the application of the proportional rates would, in our opinion, be unlawful. If proportional rates of this kind are published by carriers subject to the act they will be held to strict accountability for properly policing such rates by definite and unmistakable regulations, practices and tariff provisons. Proper evidence of the required movement from the designated inland points must be demanded before any shipper is accorded rates contingent upon such movement."

It will be observed that in the Starin-New Haven case the Commission recognized with approval that the proportional rates there under consideration are similar to proportional rates which have long existed on ex-lake ore and grain. It also referred to the Texas & Pacific case, 162 U. S. 197, as authority for the proposition that carriers may maintain proportional rates on like traffic lower than local rates if the traffic coming from beyond to which the proportional rates apply "is surrounded by and subject to substantially different circumstances and conditions than attach to the traffic originating locally at the port." The Commission also referred to Lumber from San Francisco Bay Points, 78 I. C. C. 760, where the Commission approved proportional rates on lumber lower than local rates from ports, regardless of whether the traffic reached the ports by common carriers by water or otherwise.

776 While, theoretically, a proportional rate is presumed to be a part of a through rate, a proportional rate, to be lawful under the act, need not be a part of a through rate or charge which is subject to the jurisdiction of the Commission. Unless this is so, there are thousands of proportional rates in tariffs of railroads in this country which are unlawful.

THROUGH TRAFFIC

It is stated at Sheet 7: "It is also questionable whether traffic which is consolidated by the forwarder en route is through traffic. It is generally accepted principle that in the absence of proper transit arrangements traffic is entitled to proportional rates lower than local rates only when the movement for which the proportional rates apply are continuous from and to points beyond the proportional rate points. If the continuity of the through movement is broken the full local rates apply."

The report cites no illustration, much less any precedent, to sustain its statement of the "generally accepted principle" above

set out. Nor does it reveal in any other manner the source thereof. The writers of this memorandum have had a reasonably close acquaintance with traffic and tariff principles extending over a number of years and none of them ever heard of this "principle" prior to the time it was announced by the Bureau of Motor Carriers in connection with these tariffs. Even if sound, the principle has no relevancy to this proceeding since the undisputed facts show that there is no break in the continuity of movement of this traffic which does not necessarily occur in any joint move-
ment and, indeed, in many local movements. This readily
777 appears from a comparison of the actual physical handling of a typical shipment under the suspended tariffs with that which would be accorded the same shipment when moved as an all-rail shipment. Thus, a shipment originating at Lawrence, Mass., an "off line" point would be picked up at the consignor's warehouse and transported to the nearest "key" station, Boston, where it would be consolidated with other l. t. l. shipments and moved in a single truckload or carload to Chicago, where the truckload or carload would be broken and the shipment transported to ultimate destination, say Elgin, Illinois. The shipment has retained its identity throughout the movement, being handled from ultimate origin to ultimate destination upon the forwarder's original billing. If the same shipment had moved by rail it would have been picked up at the consignor's warehouse in Lawrence, loaded into a railway car at that point, moved to Boston, where it would have been consolidated into a "merchandise car" to a connecting carrier at say Buffalo, where the car will be broken and the shipment reloaded into another "merchandise car" and moved as a carload to Chicago where the car again would be broken and the shipment moved in the way car of a connecting carrier to destination. To hold that in the latter case the shipment is a through shipment whereas the former is not is to subordinate the substance to the form, if not to mock reality with logomachy.

The report itself recognizes that transit is an exception to the "generally accepted principle." What is the difference between a transit arrangement, conceded to be proper and lawful and the
arrangement where the forwarder merely breaks the truck-
778 load or carload into its component l. t. l. shipments and immediately reships the latter as individual shipments? "Transit" is granted for storage, for warehousing and for concentration. If it is proper and lawful for a shipper to be permitted to take possession of grain, and transform it into flour or of steel parts and fabricate them into machinery or of individual cotton bales and compress and or warehouse, and, in each case, later ship the articles at "a proportional rate" what is so

heinously unlawful in this practice in which the shipper's only possession of the traffic en route is to transfer it from one carrier to another?

Moreover, the entire Commission in the Freight Forwarding Investigation, supra, expressly held that the shipment under these circumstances was a through shipment and the movement beyond the breakbulk point a continuous one. In that case the railroad transportation companies were handling as intrastate shipments the shipment from the breakbulk point to point of ultimate destination. The Commission expressly held that "the fact that the unit of shipment is changed from carload to less than carload at the breakbulk points is insufficient to impair the character of the interstate movement," citing Western Oil Refining Co. v. Lipscomb, 244 U. S. 346, and State of Texas v. Anderson Clayton & Co., 92 Fed. (2) 104 (Page 284), and again with respect to the same shipments at page 285: "If outbound less-than-carload shipments which are integral parts of interstate carload shipments arrive at Shreveport for movement beyond upon the facts presented are interstate in character and the fact that the unit of shipment is changed from carload to less than car-
779 load at Shreveport does not impair the character of the interstate movement?" [18]

We respectfully submit that the undisputed evidence shows that these tariffs apply only to through shipments originating or terminating beyond the Key Point at which respondents receive or deliver them, and that unless this Commission is prepared to overrule line of its own decisions, to say nothing of those of the Supreme Court which have been cited, for reasons or upon grounds not in this record, the form of these tariffs must be held to be lawful.

3. Suspended rates are just, reasonable, and fully compensatory.

FINDING

The report does not make any specific finding with respect to the reasonableness of the proposed rates. While it states that the most serious question involved in the proceeding is whether or not the rates are compensatory it makes no definite finding, one way or the other, even with respect to that question. It does, however, intimate that the suspended rates relatively are lower than rates applicable on local traffic between the same points.

[18] It is interesting to note that although in the Freight Forwarding Case (page 284), as well as in this case (see Exhibit 9), it was shown that the railroads themselves at the time of the hearing had published tariffs of proportional rates covering the distribution of the l. c. l. shipments from breakbulk points in Louisiana and Texas identical with those embraced in the suspended tariffs, and these tariffs were not criticized, much less ordered canceled, by the Commission in that proceeding.

REASONABLENESS

The undisputed testimony of all witnesses who testified with respect to the matter was that the suspended rates were just
780 and reasonable.[19] It was shown that the traffic was in fact a joint interline traffic handled by a carrier not subject to the act (the forwarder) jointly with a carrier subject to the act (the respondents) and that the transportation characteristics of this joint through movement are identical with similar joint through movements between any two carriers.[20] It is dissimilar from ordinary local traffic, among other things, in that one complete terminal service is avoided. When respondents handle a local shipment from Chicago to Racine they are required to pick up the freight at the warehouse of the shipper, handle it to their freight house in Chicago, platform it, bill it, sort it, and load it with other l. t. l. shipments in an outbound road haul truck, which then moves to Racine as a single unit, at which point the shipment is again platformed, sorted and loaded into a pick-up truck and delivered to the consignee's door. In connection with the shipments in question, however, no pick-up or delivery or freight house handling in Chicago is required. That since forwarder's shipments are delivered to the respondents in large quantities the respondents send not a pick-up truck, but the out-bound road truck to the forwarder's depot. All of the shipments are thereupon loaded in this outbound road truck without any further handling whatever. In the reverse direction on concentration shipments the shipments for the forwarder are loaded into a single truck
781 and move directly to the forwarder's freight house in Chicago without handling.[21]

The proposed charges on the whole are considerably higher than the respondents' divisions of joint through interline motor carrier

[19] Abstract, paragraphs 52, 62, 69, 134.
[20] Abstract, paragraphs 36 and 190.
[21] Abstract, paragraphs 20, 25, 26, 33, 71, 72, and 90.

The following examples of the number of shipments per stop and the average weight per stop of the several classes of traffic during the calendar year 1937 fully sustain the foregoing testimony.

	Average per stop	
	Average shipments	Average weight
		Pounds
Chicago Heights Trucking Co.:		
Connecting line traffic	1.79	672
Local traffic	1.27	1,140
Forwarder traffic	6.30	2,180
Elgin Transfer & Storage Co.:		
Connecting line traffic	1.18	500
Local traffic	1.06	370
Forwarder traffic	10.40	5,640
Service Transport Co.:		
Connecting line traffic	1.13	3,000
Local traffic	1.00	1,450
Forwarder traffic	14.00	7,500

rates and the revenue derived therefrom relatively much greater.

Exhibit 13 is a comprehensive weight and division exhibit which shows that in every case the proposed rate is considerably higher than respondents' divisions of motor carrier through rates for the same haul on all classes except Class 1; that in some cases it is as high as the Class 1 division and in no case is it less than 90 percent of the first class division, whereas it is frequently more than twice the division of the fourth class rates and from 30 to 50 percent higher than the division of the third class rate.

The respondents and the interveners introduced a large number of rate comparisons showing that on the whole they receive
782 on local traffic which, as pointed out, required a much greater service than the traffic here involved, lower rates and charges than those which will be produced under the suspended charges.[22]

The examination of the testimony will reveal that the impression which the report leaves that the proposed rates are substantially less than the local rates is misleading. The proposed rates generally are lower than the first and second class local rates and range between third and fourth class, but these rates are charged on all traffic, whereas the respondents move considerable of their traffic at commodity rates much lower than the class rates.

RATES COMPENSATORY

It is difficult indeed to follow the reasoning of the report upon this branch of the case. It states that there is a serious question as to whether or not the rates are compensatory. It then reasons that these respondents, together with other carriers in Central Territory, sought a minimum rate order, which the Commission made in Motor Carrier Rates in Central Territory, 8 M. C. C. 233. It erroneously states that the suspended rates are lower than the former rates and much lower than the prescribed rates, overlooking the fact that the class rates prescribed in that proceeding were those currently in effect. It assumes that because in Central Territory as a whole it was necessary that cer-
783 tain rates be prescribed as a minimum for local transportation, that those rates also represent the minimum for

[22] (Ex. 8; Tr. 163). See also Exhibits 14, 15, 22, 23, 25, 26, 27, 28.

	Revenue in cents per 100 pounds		
	Local traffic	Forwarder traffic	Interline traffic
Chicago Heights Co. (Abs. 22)	18.6	24.7	10.5
Elgin Co. (Abs. 23)	26.9	27.0	17.7
Royal Transit Co. (Abs. 35)	30.6	30.0	22.3

the transportation of traffic of an entirely different nature and under entirely different circumstances. Furthermore, the action of the report in dismissing the exhaustive and thorough cost studies made by the particular respondents in this case without any consideration whatever and in lieu thereof adopting some vague and undisclosed calculation not in evidence, is entirely unwarranted by any jurisdiction which is vested in this Commission. We respectfully submit that this Commission must decide cases upon the evidence which is introduced in the proceedings before it, that it, like every judicial or quasi-judicial tribunal, is bound to accept and follow undisputed and unimpeachable testimony, whether it likes it or not. The witnesses were unanimous that based upon their knowledge of the situation and their experience in handling this particular traffic that the proposed rates which are identical with the charges which they have been making for years were fully compensatory and profitable, and was in fact the most valuable traffic which any of them handled.[23]

COST STUDY

Thorough and detailed cost analysis was made by typical respondents in each of the three territories. In the case of the Metropolitan territory it was found that the suspended rates exceeded the average cost of providing the service by approximately 10 cents per 100 pounds, on the average, and was in excess of the average cost to every point served in the area. In making this study the traffic involved was charged with
784 full terminal expenses of two terminals, although, as stated by the witnesses, unlike local traffic, only one terminal service is required therefor.[24]

In connection with the Wisconsin territory it was found that, in all cases except one, the charges applicable under the suspended tariffs were substantially in excess of the average total cost per 100 pounds of handling all traffic by respondents, and that when allowance was made for the fact that a terminal service in Chicago was eliminated on the traffic involved, the proposed charges were substantially in excess of the cost of providing the service in all cases. The average rate under the suspended tariffs to this territory is 34.67 cents per 100 pounds; average total cost of service 30.43 cents per 100 pounds; the average profit over 4 cents above cost; the cost of providing the particular service involved averaged 28.31 cents per 100 pounds, and respondents' net profit above all costs 6.36 cents, or 22½ per cent above cost, or 18 per cent of the gross rate.[25] The traffic involved was charged with full adminis-

[23] Abstract, paragraphs 51, 54, 60, 67.
[24] Abstract, paragraphs 21, 27, 66, 77, 78.
[25] Abstract, paragraphs 29, 30, 31, 32, 50, 55, 59.

trative and solicitation expense, although, as explained by the witnesses, this was much less in the case of the particular traffic than the remainder of respondents' traffic.[26]

In the Indiana study the average cost per 100 pounds of providing the service for the traffic involved was 22 cents, and the average rate payable under the tariff was 29.3 cents, thereby providing a net profit of 7 cents per 100 pounds.[27]

785 We therefore earnestly submit that upon this complete unimpeached and undisputed testimony any finding other than that the proposed rates are fully compensatory and profitable would be an arbitrary abuse of the discretion vested in Commission to make.

LESS EXPENSE

The statement at sheet 7 of the report that "it is not apparent that any item of expense which is present in connection with ordinary less carload shipment is not present in connection with the traffic moving under the proposed rates," is not only without evidence to support but is directly contrary to the undisputed evidence. In an earlier connection it has been shown that in practically all cases this traffic requires one complete terminal handling (including pick-up or delivery, as well as station platform handling) than ordinary less-carload traffic. The average cost per one terminal handling at the Key point is in excess of 5 cents per 100 pounds. At Chicago, for example, the average is almost 7 cents.[28]

POLICING

The suggestion at sheet 7 that "it may well be that the expense of handling this class of traffic will actually be greater than that of handling local shipments of the same amounts because of the additional accounting and policing necessary to establish the fact that shipments are entitled to the proportional rate," is also wholly without evidence to support and in fact is untrue.

786 The tariffs require that the shipper refer to the billing of the consolidated consignment to or from the Key Point of which the shipment was a part. Any improper use will therefore mean an intentional false billing by the shipper. Any shipper can defeat the application of any rate by falsely billing the article shipped. If the commission is to presume that these shippers will misuse the tariffs, it must make a similar assumption as to all

[26] Abstract, paragraphs 34, 37.
[27] Abstract, paragraphs 85, 86, 87, 88.
[28] (From Exhibit 8):

	Cents
Wisconsin Fox Valley Transit Co	8.14
Service Transport Co	7.55
Royal Transit Co	3.99
M. J. Seiwert Co	9.68
Average	6.94

shippers and place upon the carriers the duty to break open and examine the contents of every package billed. Furthermore, the fact is that these shipments are handled by respondents on billing to which is attached a duplicate copy of the forwarder's original billing, showing ultimate consignor, origin consignee, and destination, which is necessary in order to effect delivery. The suggestion is baseless, not to say chimerical.

4. Proposed rates are nondiscriminatory

FINDING

At Sheet 8 the report finds "the conclusion is inescapable that the rates here proposed are in their true nature special rates for a particular type of shipper." This finding follows a statement that in the Freight Forwarding Investigation forwarders were held in respect to their relation to the railroads to be shippers. In the same case, however (at p. 299), the Commission expressly holds that the forwarder is a common carrier of freight insofar as respects its relation with the ultimate shipper. We submit that the Commission should deal with this situation realistically rather than paronomastically. Whatever the status or relation of the forwarder is in respect to the handling
787 of this particular traffic, his relationship to the respondents in fact is identical with the relationship between the respondents and any connecting carrier. In no respect whatever do these relationships differ. The mere fact that the Commission has held that the respondents may not make joint rates with carriers not subject to the Act (which finding we most respectfully insist is itself unauthorized by the Act and unlawful), and hence that the forwarder must assume the artificial relationship of a shipper, should not lead the Commission to blind itself to the actual fact that that relationship is a mere fiction set up to meet the situation caused by the Commission's own interpretation of the Act.

The fact is that these rates are not set up for a particular type of shipper. They are set up for a particular type of traffic. They are open to any person who sees fit to engage in that traffic whether he be a forwarder or not. Furthermore, any person at any time is free to engage in the business of forwarding just as he is to engage in the business of milling wheat.

Intimation that these rates constitute any preference to the forwarder or to the traffic which the forwarder handles is absolutely without basis in the record. The traffic itself is identical in nature, in classification, in movement and in operating practices and in the rate paid by the ultimate shipper with traffic

moving at joint through rates between the respondents and other carriers. As we have seen, it is wholly dissimilar to local [illegible] with which the report compares it.

788 LAWFULLY DIFFERENT

In the instant case the facts not only show that proportional rates similar to those under suspension are maintained by railroads on a variety of traffic and under a variety of circumstances, but that the conditions under which the respondents transport the traffic to which the suspended proportional rates will apply are dissimilar to the conditions under which traffic is transported by respondents under local rates between the same points of origin and destination. There is less transportation performed by respondents under the proportional rates and divisions of joint rates the same in amount as the proportional rate, than they perform under the local rates. In these circumstances it is obvious that the suspended proportional rates are neither unjustly discriminatory nor unduly prejudicial, and that they are well within the doctrine of the Texas & Pacific case. Moreover, as already pointed out, no claim is made by any shipper or other interested person in this proceeding that the rates under suspension are unduly prejudicial, preferential or unjustly discriminatory. This Commission has repeatedly held that to sustain an allegation of undue prejudice or preference, when made, the complainant must show that it has suffered injury in competition with some other shipper or community. Pensacola Chamber of Commerce v. L. & N. R. Co., 98 I. C. C. 567; Fargo Commercial Club v. A. & W. R. Co., 98 I. C. C. 691. In U. S. Phosphoric Products Corp. v. B. A. & P. R. Co., 153 I. C. C. 459, the Commission stated that it would not condemn rates which appeared to be discriminatory when measured by distance "in the absence of proof of injury." In this pro-
789 ceeding there is not only no proof of injury, but there is no claim by anyone of injury.

It is a fact that these rates, if established, will be used principally by freight forwarders. However, the rates are openly published in a tariff which may be used by any shipper which can meet the conditions of the tariff. In this respect the application of the proportional rates are no different from other proportional rates maintained by both motor carriers and railroads. As was stated by the Supreme Court in the C. N. O. & T. P. case, 162 U. S. 184, carriers are free under existing law to make special rates looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce, and of their own situation, and generally to manage their important interests upon the same principles which are re-

garded as sound and adopted in other trades and pursuits. It is a common practice for railroad to establish special commodity rates on particular commodities from particular points, despite the fact that at such points there may be located but one shipper who can avail himself of the rates. In the circumstances it will be seen that the fact that the proportional rates under suspension may be used principally by forwarders is no reason under the law to condemn them.

FORWARDER-TRUCK JOINT RATES

The tariffs go further than is necessary under controlling decisions of the Commission, since, as stated, they are open to all shippers, nonforwarders as well as forwarders. In Acme Fast Freight, Inc., et al., 8 M. C. C. 211, and, again, the Freight
790 Forwarding Investigation, supra, in line with the overwhelming weight of authority, the Commission held that with respect to shippers of l. c. l. shipments, freight forwarding companies are common carriers at common law. Those decisions further hold that, although they are such carriers, they are not common carriers subject to the Act; i. e., they have a status exactly the same as the status of interstate motor carriers prior to the enactment of the Motor Carrier Act, and of express carriers prior to 1906, who were common carriers not subject to the Interstate Commerce Act.

In the Starin-New Haven case, supra, railroad and steamship carriers, subject to the Interstate Commerce Act, published proportional rates which were applicable only in connection with motor carriers who at that time were not subject to the Act. In that case the Commission specifically held that, while it would not permit joint rates between a carrier subject to the Act and a carrier not subject to the Act, it would permit, and in that case did permit, a carrier subject to the Act to publish proportional rates which were good only with respect to the traffic that was handled beyond the junction point by the carrier not subject to the Act. Thus, the Commission, at pages 548 and 549, said:

"The hauls by motor truck from the four inland points to the Starin-New Haven docks at New Haven cannot be said to be transportation over which we have jurisdiction or a service that can be required of a common carrier. The trucking company cannot, under those conditions, be acting as an agent for a common carrier. As stated, a trucking company is not a carrier sub-
791 ject to the provisions of the act. Consequently, the trucking company is not a proper party to a joint tariff. Conf. Ruling 441.

"While there is no express prohibition in the act against the publication of joint rates in connection with a common carrier not subject to the act, we have consistently held that the line must be drawn between those carriers whose rates and practices we can control and those which we cannot control; and upon this line of reasoning it has been our ruling that joint rates cannot be made between carriers subject to the act and those not subject to the act. Cosmopolitan Shipping Co. v. Hamburg-American Packet Co., 13 I. C. C. 266. The law, however, does not prohibit either a rail or water carrier subject to the act from interchanging business with motor trucks and entering into proper arrangements to acquaint the shipping public with the total charges for the full movement. But such arrangements are not required by law and the fact that they may be entered into does not extend the terms of the act to include the motor-truck service. Section 6 requires that the charges for the service subject to the act be filed with us, which requirement we have always construed as making necessary the statement in the tariffs of such charges separately from other charges not subject to the act. In this particular the tariffs of the Starin-New Haven published in connection with the joint tariffs of the Clyde and Mallory lines and the southern rail carriers are not in accord with section 6 of the act and our tariff regulations. The charges for service subject to the act must be stated separately from other charges.

"In the interest of simplicity of tariffs, it has been our practice to discourage publication in tariffs of matter other than
792 that necessary to comply with the act and our regulations. However, in view of the circumstances surrounding the motortruck, water, and rail transportation under consideration, carriers may, if desired, include in their tariffs naming rates to or from New Haven the charges of motor trucks for the service from such inland points to New Haven, provided such charges are separate from the charges subject to the act. They may also include the combined charges for the two services from such inland points to New Haven, provided such charges are separate from the charges subject to the act. They may also include the combined charges for the two services from such inland points to ultimate destinations, but the motortruck charges and the combined charges must both be clearly shown as published for information only."

The situation presented in this case is identical. Here, since the respondents are carriers subject to the Interstate Commerce Act, even if the freight forwarder is a carrier not subject to the Act, under the authority of the Starin-New Haven case respondents might lawfully have restricted their tariffs to be applicable only in connection with shipments moving to or from the concentration points in forwarder service.

The report attempts to distinguish this case because it says that here there is a shipper involved, whereas in the Starin-New Haven case no shipper was involved. Such rationalization is shallow in marked degree. If the suspended rates had been limited to traffic moved in connection with forwarders, as they might well have been under the Starin case, the situations would have been
793 identical. The effect would have been to maintain what has been in effect for a long time, namely, joint through rates between the forwarders and the respondents. Perhaps that would have been best form for these proportional rates to have taken. Indeed, initially some of them did take that form, but they were changed to meet the objection made by the section of traffic of the Motor Carrier Bureau that this constituted a discrimination in favor of forwarders! If the truck line in the Starin-New Haven case had seen fit it might have been a shipper over the rail and water route, just as in this case the forwarder is a shipper over the rail and truck route, but there is no reason why the forwarder need assume any relation to the traffic here in question save as a common carrier forwarder connecting with the respondents at the several key points.

5. Preservation of respondents' traffic

FINDING

The cavalier treatment accorded by the report to the emergency which faces the respondents is in marked contrast to this Commission's past record for impartiality and fairness. The findings of the Report upon this branch of the case may be summarized thus: "We are not convinced that the forwarders can't be forced to lose more money than they now lose on this off-line traffic and that the respondents necessarily will lose this business, but even if they do lose it they ought to take consolation in the fact that some other carriers, rail or truck, will get the traffic and the revenue therefrom and perhaps earn more money than they now earn."

We respectfully submit that the respondents in this case
794 have a right to protect their own traffic and their own revenues, and that this Commission cannot justify the deprivation of respondents' traffic upon the theory that some other carrier will be benefited thereby. One of the first amendments to the Federal Constitution was adopted to prevent the exercise of any such jurisdiction. It is exactly the same sort of a finding as was so vigorously condemned by the Supreme Court in United States v. C. M. & St. P. Ry., supra.

EFFECT OF ORDER

The evidence is undisputed that by the co-operative efforts of respondents and the forwarders a substantial volume of traffic has been developed which is involved in this proceeding. The respondents in 1937 received $600,000 in revenue from this traffic. The total revenue involved of carriers in the Chicago territory similarly situated as respondents in 1937 was over $1,750,000.[29]

The evidence is undisputed that the traffic upon which the proposed rates apply as now handled produces a net profit to the forwarder of one cent per 100 pounds. The report refuses to accept this result, obtained by a detailed and exhaustive waybill analysis of one day's business, because it finds that by applying the average unit revenues and expenses of the one day test to the total traffic handled during the year it is found that this traffic produced for the forwarders a loss of 8 mills instead of a profit of 1 cent, as shown by the one-day test. Is it necessary to point out that it is statistically unjustifiable to apply
794a average unit revenues to an aggregate traffic for a period other than that from which they were derived, unless such units are broken down and applied to the variations in the class or movement of the traffic between the test period and the year? But whether the forwarders who made the test are to be believed in their statement that they make a profit of one cent per 100 pounds upon the traffic or whether the report is to be believed that they actually lost about the same amount on the traffic, it would follow in either case that the traffic will not bear any higher charges.

The testimony of the forwarders is positive and unequivocal that the traffic will not bear any higher charges. If, therefore, the suspended rates are canceled, and if it be finally decided by the courts that respondents may not lawfully make joint rates with common carriers not subject to the Act, and, therefore, if their present rates with the joint rates of the forwarders are also canceled, the respondents' truck lines will lose over a million dollars a year in gross revenue. As a result, a number of them would be forced out of business and the operation of all of them seriously hampered.[30]

In the case of practically all of the respondents the forwarder traffic which is a stake in this proceeding is valuable not only on account of the revenue it produces, but also because, generally speaking, it provides return loads where, in many cases, empty and wasteful truck mileage would otherwise be necessary.[31] The

[29] Abstract, paragraphs 10, 11, 12.
[30] Abstract, paragraphs 40, 53, 57, 63, 70, 81, 91.
[31] Abstract, paragraphs 47, 83, 92.

loss of the revenue, the disturbance of the balanced load
794b made possible by the traffic, the severe restrictions in traffic and the increase in expenses would be too much for these respondents to withstand.[32]

Under the decisions of the Supreme Court as we read them, the respondents, as the managers of their property, have the right to protect this traffic which they have developed. It is no answer to them for the Commission to say that they should be happy because some railroad or some other truck line gets it. That is just the reason why they have a management and why, under the law, that management and that management alone is authorized to function for them in such a case.

6. Extraneous considerations

FINDING

The report goes wholly outside of the record to comment upon two wholly extraneous matters. The first is that the approval of the proposed rate would tend to perpetuate "all-commodity rates." The second is that the proposed rates would lead to a rate war and a general lowering of the rate level in this territory. While the respondents protest vigorously against lugging into this case these extraneous matters, about which there was no testimony whatever, and respectfully insist that this Commission has no jurisdiction to give consideration to such matters, it also desires to point out that the report grievously errs in both of these matters.

ALL-COMMODITY RATES

The proposed rates are the equivalent of divisions on l. t. l.
shipments. They have nothing whatever to do with the
795 carload all-commodity rates. The mere fact that they should be approved in this case would in nowise serve as a precedent for the continuance of an all-commodity carload adjustment. Justification of those rates by rail carriers has been upon an entirely different basis. Furthermore, a flat division in cents per 100 pounds upon all class traffic is not of infrequent occurrence. In fact, with respect to l. c. l. class traffic many railroads use what are known as "road to road per cents," which apply an agreed uniform percentage of the entire revenue of l. c. l. traffic interchanged by two carriers regardless of class, origin or destination. These proportional rates are of precisely the same nature as divisions and in fact are de-

[32] Abstract, paragraphs 40, 41, 42, 43, 44.

signed to take the place of current divisions. It should be added, also, that the Commission has uniformly sustained the right of the carriers to make all-commodity rates. The Interstate Commerce Act will be searched in vain to find any provision requiring respondents to maintain for all eternity the complicated freight classification of the railroads.

RATE WAR

There is no warrant whatever for the assumption that the proposed rates will lead to a rate war. In no possible way can that adversely affect any other carrier. No carrier, rail or motor, appeared at the hearing to protest. Are these other carriers so blind and incompetent that they are unable to realize when their interests are threatened? Consideration of the simple facts will show why there was no cause for complaint. No local traffic is involved. Elaborate exhibits showed conclusively that the proportional rates are factors of through rates charged by the forwarders which are practically identical with the
796 through class rates charged by both rail and motor carriers for the same service. There is no reduction proposed in the charge to the rail shipper or consignee. He will continue to pay precisely the rate which he now pays and which he would have to pay whether or not the forwarder remained in business. Where does there arise any possibility of a rate war or the vicious cycle of reductions imagined by the report?

7. Superior service

OFF-LINE POINTS

Prior to the time respondents and the forwarders developed the coordinated service for the traffic involved in this proceeding, off-line points, that is, the small cities and towns, were at a severe disadvantage from the standpoint of service with their competitors at large manufacturing centers in the movement of l. c. l. freight. For many years the railroads have adopted the practice in moving merchandise of set-out cars between such large centers, thereby enabling the shippers and receivers of l. c. l. freight to receive a service comparable to that accorded carload traffic. This service, however, was limited to relatively fairly large cities because the traffic between any two small cities was not sufficient to warrant a special car movement. These smaller cities were compelled to rely upon way freight train service. The forwarder also for many years confined his traffic to the movement of solid cars between these large centers or on line points. In connection with these respondents, however, it was possible for there to be worked out a

service whereby the shippers at these smaller cities and
797 towns are afforded service comparable with that at the larger cities.[33]

ADVANTAGES OF SERVICE

From a transportation standpoint, the method by which respondents' trucks are coordinated with the rail and truckload operating service out of Chicago is the most efficient and serviceable way to handle that traffic, and superior in service and economy to interline all-truck or all-rail movements. It has resulted in a more expeditious, flexible service, better adapted to the particular needs of the shippers than is possible by any other combination.[34]

EXTENSIVE USE

Shippers testified that they use the coordinated service in making l. c. l. shipments wherever possible. Witnesses, representing large industries located at off-line points, testified to the enormous amount of l. c. l. traffic which they route via this service, covering all kinds of commodities and all parts of the country.[35]

SUPERIOR SERVICE

The shippers were unanimous in stating that the coordinated service was patronized primarily because it was a superior service.[36] A number of typical examples, comparing the expedition of this service with that which they were able to obtain through other means of transportation, were given in testimony, showing
in several cases that the shippers paid higher rates in order
798 to obtain the service, which was vastly superior to all-rail service.[37] They also were agreed that this service was more complete, dependable and reliable than either all-rail or all truck service,[38] and that under no circumstances would interline all-truck service be a satisfactory or even usuable substitute therefor, due to the lack of stability, organization, control and necessary integration of schedules.[39]

The report ignores wholly the interest of the real shippers involved in this controversy, which are the principal interests which this Commission was set up to foster and protect. It makes no reference whatever to the fact that the undisputed

[33] Abstract, paragraphs 192, 195, 203.
[34] Abstract, paragraphs 48, 64, 93, 110, 153, 179.
[35] Abstract, paragraphs 104, 139, 146, 147, 156, 158, 169, 171, 172, 182.
[36] Abstract, paragraphs 101, 102, 105, 107, 113, 114, 119, 120, 121, 131, 138, 145, 149, 150, 159, 160, 161, 163, 174, 175.
[37] Abstract, paragraphs 138, 149, 159, 165, 174, 175.
[38] Abstract, paragraphs 105, 107, 118, 137, 143, 170, 176.
[39] Abstract, paragraphs 109, 116, 142, 180, 186.

evidence shows that as a result of the cancellation of these tariffs many small cities and the shippers and receivers of freight located there will be put at a severe disadvantage in competition with their competitors at the larger centers.

In deciding the issues in given cases, this Commission has, over a long period of time, established an enviable record of fairness and of adherence to the principles of equity and justice, irrespective of the persons involved, and irrespective of the economic or personal views entertained by particular commissioners on particular questions at a particular time. The Commission has received many deserved commendations for that traditional policy. We respectfully but earnestly appeal to the Commission to adhere to that wise and just policy, with the confidence that if it does so in the light of the law and the facts of this case it will reverse the majority decision of Division 5.

799 Under the American system of jurisprudence, a person is presumed to be innocent of wrongdoing until the contrary is proven. There is no proof in this proceeding of wrongdoing by the respondents. Administrative agencies such as this Commission should be loath to find that carriers, subject to its jurisdiction, have violated the law in particular cases unless there is substantial, convincing and unequivocal proof and reason for such a finding. In this proceeding the majority recognize that doubts exist concerning the correctness of their findings, but they have resolved the doubts against, rather than for, the lawfulness of the suspended tariffs.

Respectfully submitted.

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FERDINAND BORN,
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801 In United States District Court

[Title omitted.]

Defendants' suggested findings of fact and conclusions of law

Filed October 19, 1939

Pursuant to Equity Rule 70½, the Court finds the following facts:

1. Plaintiffs, 41 common carriers by motor vehicle subject to the Motor Carrier Act, 1935, and to the jurisdiction of the Inter-

state Commerce Commission thereunder, bring this suit to set aside the Commission's order of July 29, 1939, in I. & S. Docket No. M-247, Proportional Rates between Chicago and Wisconsin Points, which, as amended, requires the carriers on or before November 10, 1939, to cancel out certain tariffs on the ground that such tariffs were unlawful.

802 2. The tariffs involved in the Commission proceeding, which are a part of the record herein, named proportional rates for the transportation of l. t. l. (less than truckload) shipments (all freight) between outlying marketing areas and named concentration points (including Chicago, Indianapolis, South Bend, Muncie, Fort Wayne, and Evansville), immediately preceding or following the transportation of the shipment in a truckload or carload consignment.

3. Tariffs similar to those involved in the Commission's order herein were filed in the summer of 1937 and rejected by the Bureau of Motor Carriers in a letter dated September 11, 1937, "upon several grounds."

4. Other tariffs, the ones referred to in paragraph 2 hereof, were subsequently refiled to become effective on December 1, 1937, and January 15, 1938.

5. The Commission suspended these tariffs on its own motion from time to time, acting under the authority conferred upon it by Sec. 216a of the Motor Carrier Act, and assigned the matter of their validity to an examiner for hearing.

6. Hearings were held before Examiner Later at Chicago on February 24 and 25, 1938, at which considerable testimony and other evidence in the form of exhibits were introduced.

7. After other elaborate proceedings, including the filing and consideration of voluminous briefs, Division 5 of the Com-
803 mission, on December 14, 1938, found the proposed tariffs unlawful and directed their cancelation.

8. The report of Division 5, dated December 14, 1938, is attached to and made a part of the complaint as Exhibit B. In this report the Division made this ultimate finding:

"We find that the suspended rates are unlawful. An order will be entered requiring their cancelation and discontinuing this proceeding" (Id. 566).

9. The ultimate finding in the Commission's report of December 14, 1938, was supported by subordinate findings as follows:

(a) "The proposed rates would apply generally on less-than-truckload quantities, subject to a minimum charge varying from 25 to 50 cents, but lower rates on quantities of 10,000 pounds and 20,000 pounds are also provided on all freight between some, but not all, of the Wisconsin points and Chicago" (Id. 557).

(b) "While the suspended rates are not so limited by the tariffs in their application, it is apparent that their practical application will be limited almost exclusively to traffic of freight forwarders and a few other large shippers. It is admitted that they were designed for the purpose of securing or retaining the largest possible volume of the freight forwarders' traffic" (Id. 558).

(c) "* * * In view of the legal status of the forwarders, they cannot lawfully continue to file tariffs with us or participate in joint rates with motor carriers. The suspended schedules name rates which are calculated to return approximately the same revenue to respondents as their present divisions of joint rates under the forwarder tariffs" (Id. 558).

804 (d) "* * * The total revenue of motor carriers from all traffic of the three principal forwarders handled through Chicago to and from all points is calculated at $1,178,000 for 1937" (Id. 561).

(e) "It is questionable whether the proposed rates may properly be considered as true proportional rates" (Id. 562).

(f) "It is also questionable whether traffic which is consolidated by the forwarder en route is through traffic" (Id. 562).

(g) "* * * Considering the movement in one direction, for example, it is here proposed to establish proportional rates for traffic which is surrendered to the forwarder at the reforwarding point by the rail or motor carriers which have transported it to that point and, after being sorted, it is tendered to respondents, usually in less-than-truckload quantities, but in some instances in amounts of 10,000 or 20,000 pounds. The unit of shipment from point of origin to final destination is not preserved. For example, a consolidated carload shipment may be transported by rail from New York City to Chicago, at which point it is delivered to the car forwarder. There the car forwarder, who under the findings in Acme Fast Freight, Inc., Application, supra, and in Freight Forwarding Investigation, supra, has the status of a shipper, will reship the consolidated carload by motor vehicle in various less-than-truckload shipments at the proposed proportional less-than-truckload rates, in the event they are approved. The only requirement for application of the proportional rates, which are materially lower than the local rates between the same points, is that reference be given to inbound billing on which the traffic moved into the reforwarding point, or, when movement is in reverse direction, that a statement be made as to the final destination to which the traffic is expected to go" (Id. 562–563).

805 (h) "* * * high-grade and normally highly rated traffic will move at the same rates as lower-grade traffic.

Respondents publish both class and commodity rates, which are applicable on local and interline movements. These rates are calculated to make due allowance for the transportation characteristics of the commodities in order that each commodity may bear its fair share of the transportation burden. The tendency of all-freight or all commodity rates is to break down the class-rate structure and to render class rates a nullity" (Id. 563).

(i) "* * * If respondents are permitted to establish the proposed rates for the transportation of freight in less-than-truckload quantities merely contingent upon the fact that a forwarder has moved the traffic into the reforwarding point or will move it out of such point in a pool car or a pool truck, it is probable that other common carriers will attempt to meet the situation by similarly undercutting their local rates. It is apparent that, when this situation is brought about, the carriers will be handling the same amount of freight for much less revenue, which would have the effect of exaggerating the financial straits of the carriers" (Id. 564).

(j) "* * * As previously pointed out, the establishment of rates on forwarder traffic lower than the general level of rates applicable on similar traffic handled for other shippers would doubtless be followed by similar reductions by rail and other competing carriers. In view of the unfavorable financial condition of the transportation industry as a whole, we must regard with doubt any proposal to establish a practice which will probably initiate a cycle of rate reductions with no corresponding increase in the total tonnage transported by the industry. Moreover, we are unable to conclude from the evidence that the suspended rates would not produce results that are contrary to the policy of Congress declared in section 202 (a) of part II of the act" (Id. 566).

806 (k) "* * * In the instant situation, the proposed proportional rates have no bearing whatever upon the charges collected from the owner of the property, since the owner pays charges based on the through rate of the forwarder" (Id. 565).

(l) "The record is not convincing that respondents and interveners are correct in their assumption that respondents would lose all of the revenue they now receive on traffic handled for forwarders, in the event that the proposed rates are not approved" (Id. 565).

10. Upon petition of complainants herein for reopening, the Commission reopened the case for reconsideration and, as a body (11 members), heard oral arguments and on July 29, 1939, issued its report on reconsideration, once more finding the tariffs unlawful and directing their cancelation.

11. After the Commission reopened the case, following the decision of Division 5, attorneys representing western railroads and motor operators in other districts intervened and directed arguments before the full Commission against the proposed rates.

12. The ultimate conclusion or finding of the Commission in the report on reconsideration was:

"We find that the proposed less-than-truckload rates would be unlawful in that they would violate sections 216 (d), 217 (a), and 217 (c) of Part II of the Act."

13. Subordinate findings upon which rested the Commission's ultimate conclusion, referred to in finding 10 above, contained in the Commission's report on reconsideration of July 29,
807 1939, follow:

(a) Speaking of the less-than-truckload rates, the only ones involved in this case, the report finds:

"These rates are published to apply on all freight, with specified exceptions, in the original package, in less-than-truckload quantities, moved by respondents from one or the other of the points hereinbefore named, designated in the tariffs as 'reforwarding' points, to which it has been transported as part of a carload or truckload shipment, under tariffs or schedules lawfully on file with us, to certain destinations in one or more of the States hereinbefore named. They are published to apply also on like traffic, in less-than-truckload quantities, moved by respondents in the reverse direction from the last-described points to one or the other of the reforwarding points for transportation thence as part of a carload or truckload shipment, under tariffs or schedules lawfully on file with us."

(b) Concluding discussion as to the nature of the rates, the report finds:

"These rates, except in so far as they may be used by a very few large shippers, none of whom, other than the freight forwarders, appeared in support thereof, are not the rates which would be charged the owners of the property shipped, but the rates which would be charged certain freight forwarders. They are substantially the equivalent of divisions of so-called joint rates of certain freight forwarders and these respondents which the freight forwarders have on file with us. In Freight Forwarding Investigation, 229 I. C. C. 201, we found that freight forwarders are not express companies under Part I of the interstate commerce act. In Acme Fast Freight, Inc., Common Carrier Application, 8 M. C. C. 211, we found that freight forwarders are neither common nor contract carriers under Part II of the act, and that they can not lawfully participate in joint rates with common carriers by motor vehicle. In supplemental report in the last-cited case,

decided July 24, 1939, we found that the tariffs of freight
808 forwarders applicants therein are not in consonance with section 217 (a) of Part II of the act and with our regulations thereunder, that such tariffs are improperly on file with us, that they are void and their use is unlawful, and that they should be rejected and stricken from our files effective October 10, 1939."

(c) The Commission's report also has this to say about the proposed rates:

"* * * Published, as they are, for application on all freight, except certain specified commodities which will have moved as a part of a truckload or a carload shipment to the reforwarding points or which will move from such points as a part of a truckload or a carload shipment under tariffs or schedules lawfully on file with us, these rates, as counsel for respondents conceded upon oral argument, as a practical matter can not be used in combination with the published truckload or carload rates to arrive at through rates. Nor can they be used in combination with the less-than-truckload rates of these or other motor common carriers or the less-than-carload rates of common carriers by railroad to arrive at through less-than-truckload rates, although the unit of shipment which the owner of property would tender for transportation on the proposed rates would be a less-than-truckload shipment. Stripped of protective coloring, these rates are published as proportional rates primarily as a matter of expediency to serve the purpose of certain freight forwarders and to perpetuate in another form so-called divisions of purported joint rates of the freight forwarders. As hereinbefore explained, we have ordered stricken from our files the tariffs of certain of these freight forwarders."

(d) Holding that the rate was not a proportional rate, the report found:

"We have found that a proportional rate is one which applies to a part of a through transportation which is entirely within the jurisdiction of the interstate commerce act, and that it means a part of, or the remainder of, a through rate, or it means nothing at all. Clearly, the proposed rates do not come within this definition of a proportional rate."

809 (e) Distinguishing cases relied upon by the complainants, the Commission said:

"These proposed rates derived no validity from such analogy as they may be thought to bear to proportional rates by rail to and from the ports which differ from the corresponding local rates and which apply on traffic brought to or carried from the ports by common carriers by water, or to so-called proportional rates or rates in the nature of proportional rates published by certain rail carriers for application on traffic received from or

delivered to contract carriers by water. * * *. Where, as here, both the carriers into and out of the reforwarding points are subject to the interstate commerce act, we have in no case given our approval to proportional rates lower than local rates, except when the hauls for which the proportional rates apply are parts of through movements of like units of shipment from primary origins to ultimate destinations."

(f) "* * * The proposed less-than-truckload rates as a practical matter can not be used, as previously explained, in combination with the published truckload or carload rates of the carriers which would actually perform the transportation to and from the reforwarding points to arrive at through rates, or in combination with other less-than-truckload rates or with less-than-carload rates to produce through less-than-truckload rates."

(g) After referring to section 217 (a) and (c) of the Motor Carrier Act, the Commission found:

"* * * For the reasons hereinbefore set forth, the tariffs naming the proposed rates are not what they purport to be, are lacking in clarity and definiteness, and, therefore, contravene that section."

(h) The Commission also found:

"The proposed rates are published to apply in connection with truckload consignments transported under schedules on file with us, in other words, under schedules of motor contract carriers. Respondents herein are common carriers. There is no provision, either expressed or implied, in Part II of the act for either joint rates or arrangements for the through carriage of property
810 between common and contract carriers. * * *. The proposed rates, in so far as they purport to be proportions of through rates for application in connection with contract rates, are inconsistent with respondents' status as common carriers."

(i) "The proposed rates are materially lower than respondents' local rates on like traffic between the same points, although they are not legally proportional rates and therefore have no different standing under the act than the local rates."

(j) "* * * The proposed rates ostensibly are open to the public, but the record contains no evidence that shippers advocate the maintenance of these rates, except in so far as they may serve the purpose of the forwarders. In practical effect these rates can be used by few, if any, shippers, except the forwarders."

(k) "* * * Respondents admittedly handle traffic for some shippers which is comparable in these respects with the traffic which they handle for the forwarders. Furthermore, these proposed rates and respondents' local less-than-truckload rates between these points being published for application on the same

unit of shipment, namely, a less than truckload, the fact that the forwarders furnish a greater volume of traffic generally than do individual shippers does not justify lower rates in favor of the forwarders. The use by respondents of different methods of handling traffic for the forwarders than for others does not relieve respondents from compliance with section 216 (d)."

(l) "* * * Whether the forwarders in their relation to these respondents be regarded as having the status of shippers, or whether they be considered the agents of the shippers for whom they obtain or arrange transportation, it seems clear that these proposed rates constitute a device whereby the forwarders in either capacity, and possibly a very few large shippers who can avail themselves of these rates, will be afforded transportation at rates lower than the rates which will be charged certain other shippers under substantially similar circumstances and conditions, in violation of section 216 (d)."

811 (m) As to the inadequacy of the policing of the traffic handled under the tariffs, the Commission found:

"Apart from the fact that the proposed rates would violate Part II of the act in the respects hereinbefore stated, the tariffs naming these rates contain no adequate policing rules for insuring that property shipped under these rates has in fact been transported or is to be transported as part of a carload or truckload shipment. Freight forwarders arrange for the transportation not only of freight coming from beyond or going beyond the reforwarding points but of large quantities of freight originating at or destined to such reforwarding points. There is no evidence that respondents would have any way of enforcing provisions against substitution of property originating at or destined to the reforwarding points even if such provisions were incorporated in the tariffs."

(n) "Finally, there is no evidence in this record that the owners of property transported under the proposed rates would obtain any saving in transportation charges. The owners of such property would be charged the rates of the forwarders on less-than-carload or less-than-truckload shipments between the points of original shipment and points of ultimate destination of the traffic, and these rates generally do not differ from the corresponding rates of the rail carriers. * * *. We have do desire to deprive these shippers of the expeditious service which they are now receiving on traffic which would be handled at the proposed rates, but, upon the facts shown, we have no alternative except to find that the proposed rates would violate the sections of the act hereinbefore mentioned. Obviously, our action can not be determined by considerations of mere expediency and utility."

14. The findings of the Commission herein are not only in substance clear, precise and definite, but also as a matter of form, meet all statutory requirements.

15. The Interstate Commerce Act, Part II, commits to the Interstate Commerce Commission the determining and pre-
812 scribing of the form in which tariff schedules shall be prepared and arranged, and this is an administrative function.

Conclusions of law

1. The hearings held by the Commission, in which all parties including plaintiffs herein were given full opportunity to present evidence and be heard, constituted the full hearing contemplated by the Motor Carrier Act.

2. The Commission did not unlawfully interfere in any way with the managerial discretion vested in plaintiffs.

3. The Commission's findings, as made in its reports of December 14, 1938, and July 29, 1939, are supported by adequate evidence, and are sufficient support in law for the order of July 28, 1939.

4. The order is sufficiently certain and definite in terms to enable plaintiffs to comply therewith.

5. By the order, finding the tariffs unlawful and in violation of sections 216 (d), 217 (a), and 217 (c) of the Motor Carrier Act, the Commission exercised the power conferred upon it by the Act, and in making the order the Commiss[illegible] did not exceed its authority.

6. The order is in all respects a lawful order.

7. The petition should be dismissed.

_____, _____,

United States Circuit Judge.

_____, _____,

United States District Judge.

_____, _____,

United States District Judge.

813 *Record references to defendants' suggested findings of fact and conclusions of law in Chicago Heights Trucking Company et al. v. United States and Interstate Commerce Commission*

1. The authority for the statements contained in this paragraph is contained in the Bill of Complaint, Paragraph 1.

2. The authority for the statements contained in this paragraph is contained in the tariffs, introduced at the hearing, and numbered Exhibit 1 of the exhibits introduced before the Interstate Commerce Commission.

3. The basis for this statement is Exhibit 17 before the Interstate Commerce Commission, part of the record herein.

4. The authority for the statements contained in this paragraph again is contained in the tariffs, Exhibit 1 before the Commission.

5. The authority for the statements contained in this paragraph is contained in Paragraph III of the Bill of Complaint, and by referring to Section 216 (a) of the Motor Carrier Act, the Court will perceive that the Commission has authority to act on its own motion.

814 6. The hearings referred to in paragraph 6 will not be disputed as they are reported in Paragraph IV of the Bill of Complaint and the testimony and exhibits introduced at those hearings have been introduced in evidence.

7. The decision of Division 5, referred to herein, is Exhibit B of the Bill of Complaint.

8. The finding of the Commission referred to in this paragraph appears at page 566 of Exhibit B to the Bill of Complaint.

9. The subordinate findings quoted from under this number, and subheaded (a) to (1), inclusive, are taken from the respective indicated pages of Exhibit B. The basis for the Commission's statements therein, correspondingly lettered, follows:

(a) Refer to the tariffs, Exhibit 1 before the Commission.

(b) One of the bases for this statement is contained in the petition for reconsideration, page 36, filed with the Commission on December 28, 1938. The large shippers using this service
815 and the amount of traffic they receive and offer the forwarders is shown in the following pages of the testimony before the Commission: 49, 51, 59, 99, 105, 117, 139, 213, 215-216, 218, and 225.

(c) The legal status of the forwarders referred to herein is contained in the Commission's decisions in Freight Forwarding Investigation, 229 I. C. C. 201, and Acme Fast Freight, Inc. Common Carrier Application, 8 M. C. C. 211. In support of the Commission's statement that the suspended schedules named rates which are calculated to return approximately the same revenue to respondents as their present divisions, see pp. 36-37 of the testimony and also pp. 38-44. See also p. 165 of the testimony; also Exhibit No. 6.

(d) Testimony, p. 24.

(e) This is a conclusion of the Commission based upon the proposed rates and the explanation thereof by Witness Girard, testimony pp. 7-45.

(f) Same answer as to (e).

(g) This is supported by an examination of the tariffs and by the testimony of Witness Girard, pp. 7-45.

(h) See Exhibits Nos. 12 to 16, inclusive, before the Commission and the testimony of Witness Johnson in support thereof, pp. 76–96.

816 (i) See admission of Mr. Turney, pp. 252–253 of the testimony. See also oral argument of counsel for the railroads, Mr. Mathews, and counsel for other motor carrier operators opposing the tariffs, Mr. Watkins, beginning at pp. 327 and 318 of certified copy of the oral argument before the Commission, introduced in evidence before this Court. Also as an expert body dealing with regulation and rates of rail and motor carriers, the Commission is well aware of repercussions apt to follow from filing tariffs such as these.

(j) Same answer as to (i) above.

(k) Pages 36–37 of the testimony.

(l) This is a negative finding upon which it is difficult to refer the Court to specific pages of the testimony except to refer to the testimony as a whole. See also testimony of Witness Whistler, pp. 215–216, that his traffic increased eight million pounds in one year. See also p. 218 of the testimony; also testimony pp. 127–128. See also testimony of Witness Girard, p. 170; also testimony of Witness Whistler, p. 223, that business has been lost through factory shutdown.

817 10. As authority for these statements, see report of the Commission on reconsideration, Exhibit A to the Bill of Complaint, particularly the second paragraph on page 1 and the three paragraphs at the top of page 12.

11. See the oral argument before the Commission introduced in evidence, pp. 318 and 327.

12. See Exhibit A to the Bill of Complaint, p. 12.

13. The subordinate findings quoted under this number, (a) to (n), inclusive, are taken from the Commission's decision on reconsideration in this case, which has not been printed, but which is attached to the Bill of Complaint as Exhibit A. The basis for the Commission's findings therein, correspondingly lettered, follows:

(a) Refer to the tariffs, Exhibit 1 before the Commission.

(b) As a basis for the statements contained herein, see the petition for reconsideration filed herein on December 28, 1938, particularly page 36 thereof. The large shippers using this service and the amount of traffic they receive and offer the forwarders is shown in the following pages of testimony
818 before the Commission: 49, 51, 59, 99, 105, 117, 139, 213, 215–216, 218, and 225. The Commission's statement that these are not the rates which would be charged the owners of

the property shipped, but the rates which would be charged certain freight forwarders is shown by an examination of the tariffs. See also Exhibit 3 and testimony in support thereof, pp. 19–20. At page 43 of the testimony appears the statement that the forwarder traffic pays relatively higher rates than any of the other traffic handled by these carriers and the proposed rates are identical with those now being charged. See also testimony, pp. 94–95, 132–133, 139–140, 147, 169, and also the testimony at page 202 to the effect that when these rates were established no attempt was made to change the level of the existing rates. In other words, the owner of the property has to pay the same rates whether these rates are suspended or not. To support the Commission's statement that the suspended rates are substantially the equivalent of divisions of so-called joint rates, see pp. 34–37 of the testimony. See also testimony, p. 106. See also p. 130. Reference to the Commission's reports referred to in the remainder of this paragraph can be noticed judicially by this Court. See Section 14 (3) of the Interstate Commerce Act.

819 (c) Most of the Commission's statements contained in this paragraph are apparent from an examination of the tariffs, Exhibit 1 before the Commission. The concession of counsel at the oral argument referred to in this paragraph is at pp. 257–258 of the testimony. The Commission's statement that these rates are to perpetuate in another form so-called divisions of joint rates of the forwarders is supported by the record references referred to in paragraph (b), just above.

(d) This is merely a reference to other decisions of the Commission of which judicial notice could be taken.

(e) This is an analysis by the Commission of previous decisions and previous tariffs permitted to be filed with it, together with an explanation by the Commission of the differences between those cases and this.

(f) See the statements contained under paragraph (c) of this number.

(g) This statement appears in Exhibit B to the Bill of Complaint, p. 7.

(h) An examination of the tariffs, Exhibit 1, discloses how they are published to apply. There is no question that respondents are common carriers. The other statements contained

820 in this subparagraph are apparent from an examination of the Act which the Commission was entirely competent to make.

(i) See references under paragraph 9 (h), p. 3 of this pamphlet. See also references under 9 (i), p. 4, above.

(j) See references under 9 (b), p. 2, above.

(k) See page 257 of the oral argument. The fact that the forwarders furnish a greater volume of traffic than individual shippers is shown by record references as follows: 49, 99, 105, 109, 117, 139, 213, 215–216, and 218. The method of publishing these proposed rates, referred to in this subparagraph is apparent from an examination of the tariffs, introduced in evidence.

(l) This is a conclusion of the Commission following their prior findings, references to which have been given.

(m) That the proposed tariffs are inadequate in their policing requirements would be apparent to the Commission from an examination of those tariffs. Even Chairman Eastman, dissenting, admits there is something in this criticism of the Commission. See sheets 18–19 of Exhibit A to the Bill of Complaint.

821 The way the freight forwarders arranged for the transportation is explained in the testimony of Witness Girard at various points, including pages 11, 12, 13: 25–27, and 28. The Commission's statement that there was no evidence that respondents had any way of enforcing provisions against substitution of property is a conclusion following from its ability to examine and interpret the tariffs, from the prior statements referred to in this paragraph, and from the obvious impossibility of pointing out evidence where the Commission says "There is no evidence."

(n) The Commission's statement that there is no evidence to show that the owners of property transported under the proposed rates would obtain any savings in transportation charges is of course negative in character. As a basis for its other statements as to what the owners of the property would be charged, see the record references under paragraph 13 (b) above.

14. This finding by the Court, which perhaps is more properly a conclusion of law, is supported by the reasons advanced at pp. 6–20 of the Commission's brief.

822 15. This, too, might be regarded as a conclusion of law but whether a conclusion of law or a finding of fact, it is supported by Norfolk & Southern Ry. Co. v. Chatman, 244 U. S. 276, 284.

Seven conclusions of law appear to us to follow the above suggested findings of fact and it is our hope that the Court will enter them.

E. M. REIDY,
For Interstate Commerce Commission.

OCTOBER 16, 1939.

824 In United States District Court

[Title omitted.]

Findings of fact and conclusions of law

Filed Nov. 7, 1939

In the above entitled cause, the Court makes the following

Findings of fact

1. Plaintiffs are common carriers of property by motor vehicle and subject to the Motor Carrier Act, 1935, and operate over public highways in the States of Illinois, Wisconsin, and Indiana.

2. In October and December, 1936, plaintiffs caused three tariffs to be filed with the Interstate Commerce Commission, naming rates on less-than-carload interstate shipments of "all freight" (with certain exceptions not necessary to name) immediately preceding or following transportation thereof as part of a consolidated truckload or carload consignment between (a) Chicago, Illinois, upon the one hand, and points in Wisconsin and Illinois, upon the other, and (b) Indianapolis, South Bend, Fort Wayne, Muncie, and Evansville, Indiana, upon the one hand, and points in Indiana within the respective trade areas of each of said cities, upon the other.

3. The aforesaid tariffs were suspended by the Commission, on its own motion, without complaint, by its orders of November 29, 1937, and January 14, 1938, and following the hearing provided in the Motor Carrier Act and a report by the examiner recommending that the tariffs be found lawful, a division of the Commission found the rates named in the tariffs to be unlawful and ordered the tariffs canceled. Upon rehearing, the entire Commission affirmed this order, but upon findings substantially different from those made by the division.

4. While the tariffs are not restricted and apply to the traffic of all shippers, the principal traffic which will be carried under
825 the suspended rates is what is called by the Commission "freight forwarder traffic." This traffic consists of individual less-than-carload shipments of freight originating or terminating at points far distant from the lines and routes of plaintiffs, and carried in a coordinated rail, road and motor carrier service under the control and direction of common carrier organizations known as "freight forwarders."

5. The method by which said freight is carried is as follows: Plaintiffs jointly with other carriers forwarder, rail and motor, maintain a nation-wide sales and ice organization whereby

individual less-than-carload shipments are collected at the door of the shipper from all producing points in each marketing area, concentrated by motor truck at the market center of the area, consolidated with other similar shipments, and moved in consolidated car lot or truck lot consignments to a breakbulk station located at the center of the consuming trade area from which the individual less-than-carload shipments are distributed to the door of the consignee. Plaintiffs perform the concentration and distribution service, between concentration and breakbulk stations, located in the cities named in paragraph 2, supra, and points within the trade area of each.

6. This coordinated transportation of plaintiffs has resulted in a more complete, dependable, and reliable service generally superior to either all-rail or all-truck competitive services, as a result of which it is widely patronized by shippers.

7. The "forwarder traffic," which would be carried under these tariffs, at the present time and for a number of years prior, is and was carried under joint tariffs of plaintiffs, freight forwarding carriers, and other motor carriers, now on file with the Commission, naming through rates on the less-than-carload shipments from ultimate point of origin to ultimate destination, which tariffs were ordered stricken from the files of the Commission by an order issued at about the same time as the order which this proceeding seeks to annul and enjoin.

8. Plaintiffs' compensation, in the form of divisions of the joint rates described in paragraph 7, presently and formerly received for their services in connection with the transportation of such traffic, is practically identical with the compensation which plaintiffs would receive for like services under the suspended tariffs.

826 9. Plaintiffs contemporaneously maintain what are called "local rates" upon less-than-carload freight, originating or terminating at the points named in paragraph 2 hereof, which differ from the suspended rates in that such freight shipments are classified into a number of different classes, each taking a different rate, some of which rates are higher and some lower than the suspended rates, which latter rates apply on all freight, regardless of classification. The average revenue per 100 pounds derived by plaintiffs from such local rates, upon the whole, is less than the average revenue per 100 pounds which will be produced by the suspended rates for movement between the same points.

10. The service which will be provided by plaintiffs under the suspended rates is identical with the service which they now perform in the carriage of through interline shipments under existing

joint tariffs with other motor carriers with whom plaintiffs connect, and the suspended rates are substantially higher than the divisions which plaintiffs receive for their services for the carriage of such interline traffic.

11. The service which plaintiffs will be required to provide under the suspended tariffs is different and less than it is required to provide for traffic moving at its tariffs of local rates, in that (a) no solicitation or billing is necessary; (b) but one instead of two terminal services (collection, delivery, and station platform handling) is required; and (c) relatively fewer deliveries are required; and (d) the expense of providing such service under the suspended tariffs will be less than the expense of the service required in the transportation of such local traffic.

12. The traffic which will be handled under the suspended rates consists of through interline shipments and either originates or terminates on plaintiffs' lines, whereas the traffic handled at plaintiffs' local rates consists of local shipments which both originate and terminate on plaintiffs' lines.

13. Movement of the traffic which will be carried at the suspended rates is affected and influenced by commercial, economic, and competitive conditions, applicable to long distance commerce between points on plaintiffs' routes and points in all other states, whereas the movement of plaintiffs' local traffic is influenced
827 by the local commercial conditions applicable in the restricted trade areas about each of the cities named in paragraph 2.

14. There is no evidence or claim that any particular person, port, gateway, locality, or description of traffic will be injured or damaged, or occasioned any loss by operation of the suspended tariffs.

15. The suspended tariffs explicitly state the applicable rates and accurately describe the service to be rendered (and the rules applicable thereto) for such rates.

16. The suspended tariffs plainly state the charges which are proposed to be made thereby and the time when such charges will take effect.

17. Enforcement of the order of the Commission will deprive plaintiffs of a large and profitable part of their revenues.

18. Plaintiffs have duly invoked and exhausted all their rights and remedies at law before seeking relief in equity.

19. The case was submitted to the Court at the conclusion of final hearing, the Court having received in evidence certified copies of the transcript of testimony, exhibits, petitions, and tariff rules which constituted the record before the Commission.

828 The Court thereupon announces the following

Conclusions of law

I. Section 216 (d) of the Motor Carrier Act does not condemn as unlawful rates which discriminate in favor of a person or traffic without unjustly discriminating against any particular person, port, gateway, locality, or description of traffic.

II. The compensation to be charged under the suspended tariffs is not less than that charged under plaintiffs' tariffs of local rates.

III. The service to be rendered by plaintiffs under the suspended tariffs is unlike service rendered by plaintiffs in the transportation of local traffic.

IV. The traffic to be carried by plaintiffs under the suspended tariffs is unlike traffic carried by them under their tariffs naming local rates.

V. The traffic to be carried by plaintiffs under the suspended tariffs will be transported under circumstances and conditions dissimilar to those under which local traffic is carried.

VI. The suspended rates do not unduly or unreasonably prefer or advantage any particular person, port, gateway, locality, or description of traffic in any respect whatever, nor subject any particular person, port, gateway, locality, or description of traffic to any unjust discrimination, undue or unreasonable prejudice or disadvantage in any respect whatsoever, in violation of section 216 (d) or any other section of the Motor Carrier Act, 1935.

VII. The suspended tariffs do not contravene section 216 (d), 217 (a), 217 (c) or any other section or provision of the Motor Carrier Act, 1935.

VIII. The order of the Commission is based upon an erroneous and unlawful interpretation of sections 216 (d), 217 (a), and 217 (c) of the Motor Carrier Act, 1935.

IX. The finding of the Interstate Commerce Commission that the above-described tariffs are unlawful is not supported by substantial evidence, and is contrary to the evidence.

X. Enforcement of said order of the Commission will irreparably injure plaintiffs.

829 XI. The order of the Interstate Commerce Commission, directing the cancellation of the suspended tariffs, is arbitrary, unlawful, and void.

XII. The relief for which plaintiffs pray should be granted.

OTTO KERNER,
United States Circuit Judge.

CHARLES E. WOODWARD,
United States District Judge.

JOHN P. BARNES,
United States District Judge.

831 In United States District Court for the Northern District of Illinois, Eastern Division

No. 907

CHICAGO HEIGHTS TRUCKING COMPANY, ET AL., PLAINTIFFS

vs.

UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Final decree

Filed Nov. 7, 1939

This cause coming on to be heard before the undersigned, constituting a Court of three judges, convened pursuant to statute (28 U. S. C. A. 47), upon application of the plaintiffs for an interlocutory and a final injunction enjoining enforcement and annulling an order of the Interstate Commerce Commission, and final hearing having been held, the evidence and argument of counsel received and considered, and the cause submitted for final decree, and the Court having made its findings of fact and conclusions of law; it is

Considered, ordered, adjudged, and decreed that the application of plaintiffs for an injunction restraining the enforcement of and annulling the order of the Interstate Commerce Commission be and it hereby is granted, and defendants, United States of America and the Interstate Commerce Commission, their agents, marshals, police, servants, attorneys, and each of them be and they hereby are perpetually enjoined and restrained from enforcing a certain order of the Interstate Commerce Commission made and entered by said Commission in its "Investigation and Suspension Docket No. M-247," in a proceeding entitled "Propo. 'ional Rates" and directing plaintiffs to cancel on or before October 10, 1939 (which date by subsequent order of said Commission was extended to November 10, 1939), the tariffs suspended in said proceeding by the orders of said Commission dated November 29, 1937, and January 14, 1938.

832

OTTO KERNER,
United States Circuit Judge.
CHARLES E. WOODWARD,
United States District Judge.
JOHN P. BARNES,
United States District Judge.

834 IN UNITED STATES DISTRICT COURT

[Title omitted.]

Petition for appeal

Filed January 5, 1940

To the Honorable Judges of the United States District Court for the Northern District of Illinois; Eastern Division:

The United States of America and the Interstate Commerce Commission, defendants in the above-entitled case, feeling themselves aggrieved by the final decree entered by this Court on November 7, 1939, pray an appeal from said decree to the Supreme Court of the United States, in accordance with the statutory requirements.

The particulars wherein they consider the decree erroneous are set forth in the assignment of errors, accompanying this petition and to which reference is hereby made.

Said defendants pray that a transcript of the record, proceedings and papers on which said decree was made and
835 entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

Dated January 5, 1940.

WILLIAM J. CAMPBELL,
United States Attorney,
THURMAN ARNOLD,
Assistant Attorney General,
FRANK C. COLEMAN,
Special Assistant to the Attorney General,
For the United States of America.
DANIEL W. KNOWLTON,
E. M. REIDY,
For the Interstate Commerce Commission.

841 In United States District Court

[Title omitted.]

Assignment of errors

Filed January 5, 1940

Now come the United States and the Interstate Commerce Commission, defendants in the above-entitled cause, by their respective counsel and in connection with their appeal, file the

following assignments of error upon which they will rely in the prosecution of their appeal to the Supreme Court of the United States from the final decree of this Court entered November 7, 1939.

The District Court erred:

(1) In finding that the entire Commission affirmed the order of Division 5, "upon findings substantially different from those made by the division."

(2) In finding that the traffic involved in the proceeding
842 before the Commission is "carried in a coordinated railroad and motor carrier service under the control and direction of common carrier organizations known as "freight forwarders."

(3) In failing to sustain the finding of the Commission that while the suspended rates are not so limited by the tariffs in their application, it is apparent that their practical application will be limited almost exclusively to traffic of freight forwarders and a few other large shippers.

(4) In failing to hold, as found by the Commission, that the total revenue of motor carriers from all traffic of the three principal forwarders handled through Chicago to and from all points is calculated at $1,178,000 for 1937.

(5) In failing to hold that the suspended rates are, as found by the Commission, materially lower than the local rates between the same points.

(6) In failing to hold, as found by the Commission, that high-grade and highly-rated traffic will move at the same rates as lower-grade traffic and that plaintiffs herein publish both class and commodity rates, which are applicable on local and interline movements. These rates are calculated to make due allowance for the transportation characteristics of the commodities in order that each commodity may bear its fair share of the transportation burden. The tendency of all-freight or all commodity rates is to break down the class-rate structure and to render class rates a nullity.

(7) In failing to sustain the finding of the Commission that, if these proposed rates are permitted to become effective,
843 it is probable that other common carriers will attempt to meet the situation by similarly undercutting their local rates, and the effect probably will be to initiate a cycle of rate reductions with no corresponding increase in the total tonnage transported by the industry.

(8) In failing to sustain the finding of the Commission that the proposed proportional rates have no bearing whatever upon the charges collected from the owner of the property, since the owner pays charges based on the through rate of the forwarder.

(9) In failing to sustain the finding of the Commission that these rates, except in so far as they may be used by a very few large shippers are not the rates which would be charged the owners of the property shipped, but the rates which would be charged certain freight forwarders.

(10) In failing to sustain the finding of the Commission that these proportional rates as a practical matter can not be used in combination with the published truckload or carload rates to arrive at through rates.

(11) In failing to sustain the finding of the Commission that these rates are published as proportional rates primarily as a matter of expediency to serve the purpose of certain freight forwarders and to perpetuate in another form so-called divisions of purported joint rates of the freight forwarders, and that they are not proportional rates.

(12) In failing to sustain the finding of the Commission that where, as here, both the carriers into and out of the
844 reforwarding points are subject to the interstate commerce act, the Commission has in no case given its approval to proportional rates lower than local rates, except when the hauls for which the proportional rates apply are parts of through movements of like units of shipment from primary origins to ultimate destinations.

(13) In failing to sustain the finding of the Commission that the proposed less-than-truckload rates as a practical matter cannot be used in combination with the published truckload or carload rates of the carriers which would actually perform the transportation to and from the reforwarding points to arrive at through rates, or in combination with other less-than-truckload rates or with less-than-carload rates to produce through less-than-truckload rates.

(14) In failing to sustain the finding of the Commission that the tariffs naming the proposed rates are not what they purport to be, are lacking in clarity and definiteness, and, therefore, contravene section 217 (c) of the Motor Carrier Act.

(15). In failing to sustain the finding of the Commission that the proposed rates are published to apply in connection with truckload consignments transported under schedules on file with the Commission, in other words, under schedules of motor contract carriers. Respondents herein are common carriers. There is no provision, either expressed or implied, in Part II of the act for either joint rates or arrangements for the through carriage of property between common and contract carriers. The proposed rates, in so far as they purport to be proportions of through rates for application in connection with contract

rates, are inconsistent with respondents' status as common carriers.

845 (16) In failing to hold that the proposed rates are materially lower than plaintiffs' rates on like traffic between the same points.

(17) In failing to hold, as found by the Commission, that the proposed rates can be used by few, if any, shippers except the forwarders, and that plaintiffs admittedly handle traffic for some shippers which is comparable with the traffic which they handle for forwarders.

(18) In failing to hold, as found by the Commission, that these proposed rates and plaintiffs' local less-than-truckload rates between these points being published for application on the same unit of shipment, namely, a less-than-truckload, the fact that the forwarders furnish a greater volume of traffic generally than do individual shippers does not justify lower rates in favor of the forwarders.

(19) In failing to sustain the finding of the Commission that these proposed rates constitute a device whereby the forwarders in either capacity, and possibly a very few large shippers who can avail themselves of these rates, will be afforded transportation at rates lower than the rates which will be charged certain other shippers under substantially similar circumstances and conditions, in violation of section 216 (d).

(20) In failing to hold, as found by the Commission, that the tariffs naming these rates contain no adequate policing rules for insuring that property shipped under these rates has in fact been transported or is to be transported as part of a carload or truckload shipment.

(21) In failing to sustain the finding of the Commission that there is no evidence in this record that the owners of
846 property transported under the proposed rates would obtain any saving in transportation charges.

(22) In substituting its judgment for that of the Commission upon administrative matters.

(23) In weighing the evidence in such a way as to reach conclusions upon administrative matters contrary to those found by the Commission, which weighing of the evidence for such a purpose is contrary to numerous decisions of the Supreme Court.

(24) In holding that there is no evidence or claim that any particular person, port, gateway, locality, or description of traffic will be injured or damaged or occasioned any loss by operation of the suspended tariffs.

(25) In finding, contrary to holding of the Commission, that the suspended tariffs explicitly state the applicable rates and ac-

curately describe the service to be rendered under such rates, and in holding that the suspended tariffs plainly state the charges which are proposed to be made thereby and the time that such charges will take effect.

(26) In concluding as a matter of law that Section 216 (d) of the Motor Carrier Act was not violated by the suspended tariffs and in not holding that whether the suspended tariffs contravene Sections 216 (d), 217 (a), and 217 (c) of the Motor Carrier Act is an administrative question for the determination of the Commission.

(27) In concluding, as a matter of law, that the compensation to be charged under the suspended tariffs is not less than that charged under plaintiffs' tariffs of local rates.

847 (28) In concluding as a matter of law, that the service to be rendered by plaintiffs and traffic to be carried by plaintiffs under the suspended tariffs is unlike service rendered by plaintiffs or unlike traffic carried by them under their tariffs naming local rates.

(29) In concluding, as a matter of law, that the traffic to be carried by plaintiffs under the suspended tariffs will be transported under circumstances and conditions dissimilar to those under which local traffic is carried.

(30) In concluding, as a matter of law, that the order of the Commission is based upon an erroneous and lawful determination of Sections 216 (d), 217 (a), and (217 (c) of the Motor Carrier Act, 1935.

(31) In concluding, as a matter of law, that the finding of the Commission that the tariffs involved in this case are unlawful is not supported by substantial evidence and is contrary to the evidence, and that the enforcement of the Commission's order will irreparably injure plaintiffs.

(32) In concluding, as a matter of law, that the Commission's order is arbitrary, unlawful and void, and in granting the relief for which plaintiffs prayed.

(33) In not dismissing the bill of complaint at plaintiffs' costs.

Dated January 5, 1940.

WILLIAM J. CAMPBELL,
United States Attorney.

848 THURMAN ARNOLD,
Assistant Attorney General.
FRANK COLEMAN,
Special Assistant to the Attorney General,
For the United States of America.
DANIEL W. KNOWLTON,
E. M. REIDY,
For the Interstate Commerce Commission.

849 In United States District Court

[Title omitted.]

Order allowing appeal

Filed January 5, 1940

In the above-entitled cause, the United States of America and the Interstate Commerce Commission, defendants, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final decree of this Court entered November 7, 1939, and having also made and filed an assignment of errors, and a statement of jurisdiction, and having in all respects conformed to the statutes and rules of Court in such case made and provided, it is

850 Ordered and decreed that the appeal be, and the same is hereby, allowed as prayed for.

Dated January 5, 1940.

United States Circuit Judge.
CHARLES E. WOODWARD,
United States District Judge.
JOHN P. BARNES,
United States District Judge.

851 In United States District Court

[Title omitted.]

Notice to the Attorney General of the State of Illinois

Filed January 5, 1940

To the Honorable JOHN CASSIDY,
Attorney General of the State of Illinois:

Pursuant to the Urgent Deficiencies Act of October 22, 1913, 38 Stat. L. 221, you are hereby notified that the United States of America and the Interstate Commerce Commission, defendants in the above-entitled cause, have taken an appeal to the Supreme Court of the United States from the final decree of the United States District Court for the Northern District of Illinois, Eastern Division, entered November 7, 1939, and the order allowing

the appeal makes the same returnable within forty days from the date thereof.

Dated January 5, 1940.

WILLIAM J. CAMPBELL,
United States Attorney.

852 THURMAN ARNOLD,
Assistant Attorney General,
FRANK COLEMAN,
Special Assistant to the Attorney General,
For the United States of America.
DANIEL W. KNOWLTON,
E. M. REIDY,
For the Interstate Commerce Commission.

Service of the foregoing notice to the Attorney General of the State of Illinois, and the receipt of a copy thereof are hereby acknowledged this 5th day of January 1940.

JOHN CASSIDY,
Attorney General, State of Illinois.

865 In United States District Court

[Title omitted.]

Petition for order staying final decree pending appeal

Filed Nov. 27, 1939

To the Honorable OTTO KERNER, *United States Circuit Judge,* CHARLES E. WOODWARD and J. P. BARNES, *United States District Judges:*

The United States of America and the Interstate Commerce Commission, defendants in the above-entitled case, respectfully move that this Court enter an order staying the judgment or final decree entered in this cause, pending the determination of an appeal from said decree they propose to take to the Supreme Court of the United States, and show as grounds therefor:

1. On November 7, 1939, this Court entered its final decree annulling and setting aside an order of the Interstate Commerce Commission of July 29, 1939, which, as amended, requires the carriers on or before December 1, 1939, to cancel out certain
866 tariffs on the ground that such tariffs were unlawful. The tariffs named proportional rates for the transportation of l. t. l. (less than truckload) shipments (all freight) between outlying marketing areas and named concentration points (Chicago, Indianapolis, South Bend, Muncie, Fort Wayne, and Evansville)

immediately preceding or following the transportation of the shipment in a truckload or carload consignment.

2. Tariffs similar to those involved in the Commission's order herein were filed in the summer of 1937 and rejected by the Bureau of Motor Carriers. The tariffs were subsequently refiled to become effective on December 1, 1937 and January 15, 1938. The Commission suspended the tariffs on its own motion from time to time and assigned the matter of their validity to an examiner for hearing. After elaborate proceedings, including full hearings and the consideration of voluminous briefs, Division 5 of the Commission, on December 14, 1938, found the proposed tariffs unlawful and directed their cancelation. Upon petition of plaintiffs herein for reopening, the Commission as a body (11 members) heard oral arguments and on July 29, 1939, issued its report on reconsideration, once more finding the tariffs unlawful and directing their cancelation. It thus appears that on three different occasions, once by officials of the Bureau of Motor Carriers, once by Division 5 of the Commission, and once by the entire Commission, have these tariffs been found unlawful.

867 3. These defendants are exercising the right conferred by Urgent Deficiencies Act (38 Stat. 219, U. S. Code, Sup. III Title 28, Sec. 45a) to take a direct appeal to the Supreme Court of the United States from said final decree of November 7, 1939, and are speedily engaged in the preparation of such appeal papers. The Urgent Deficiencies Act provides that "appeal to the Supreme Court, however, shall in no case supersede or stay the judgment ordered of the district court appealed from, unless the Supreme Court or a justice thereof shall so direct, and appellant shall give bond in such form and in such amount as the Supreme Court or the justice of that court allowing the stay, may require." The Supreme Court has held that application for a stay pending appeal under that Act should be presented first to the judges of the district court who have heard the case. Virginian Railway Company v. United States, 272 U. S. 658.

4. Said decree, in annulling and enjoining the Commission's order, leaves the plaintiffs free on or after December 1, 1939, to file and put into effect tariffs establishing these proportional rates, in the face of the Commission's finding that:

"We find that the proposed less-than-truckload rates would be unlawful in that they would violate sections 216 (d), 217 (a), and 217 (c) of Part II of the Act."

5. Unless restrained by order of Court, counsel for one of the plaintiffs' have advised they will so proceed

868 with the establishment of these tariffs before the Supreme Court can hear and determine the appeal. Without at-

tempting to re-litigate this Court's decision, which we respect, and in presenting this matter to the court as an exercise of its sound judicial discretion, we call your attention to the fact that these tariffs of plaintiffs, though filed in 1937, have not yet gone into effect; that to permit such tariffs to become effective would disturb the existing status and not preserve it, a matter properly to be considered by this Court in acting upon this application, and that, under all the circumstances, an order staying this Court's decree pending appeal to and decision by the Supreme Court will not unduly prolong the existing status in view of the expedited action being taken by defendants towards perfecting their appeal.

6. The Urgent Deficiencies Act invoked by the plaintiffs in this case not only provides for the issuance of a stay order for the purpose of maintaining the status quo pending appeal, but it also makes the issuance of such stay order essential to the maintenance of the status quo pending appeal.

Wherefore, defendants pray that this Court enter an order staying, pending the appeal to and determination by the Supreme Court, the final decree entered in this cause on November 7, 1939, and restraining and preventing the plaintiffs from
869 putting said tariffs in o effect or otherwise changing the status quo of the matter involved in said order of the Commission, during the pendency and decision of the appeal before the Supreme Court.

_____,
United States Attorney,
FRANK COLEMAN,
Special Assistant to the Attorney General,
E. M. REIDY,
Assistant Chief Counsel,
Interstate Commerce Commission.

_____,
Assistant Attorney General,
DANIEL W. KNOWLTON,
Chief Counsel,
of Counsel,
Interstate Commerce Commission.

Copy of petition for order staying final decree pending appeal acknowledged this 24th day of November 1939.

J. R. TURNEY,
Counsel for plaintiffs.
R. E. QUIRK,
Counsel for intervening plaintiffs.

216318—40——33

871 In United States District Court

[Title omitted.]

Answer to petition of defendants for order staying final decree pending appeal

Filed Nov. 27, 1939

To the Honorable OTTO KERNER, *United States Circuit Judge*, CHARLES E. WOODW[illegible] and J. P. BARNES, *United States District Judges:*

Come now plaintiffs and interveners and for answer to the petition of defendants for order staying final decree pending appeal, say:

1. Contrary to the averment of defendants' petition, the stay of the final decree in this cause would destroy the present status and irreparably injure plaintiffs, and in large measure finally defe the purpose of their complaint.

2. As found by the Court herein (Findings of Fact 7 and 8), the traffic, which will be carried under the suspended tariffs, for a number of years past has been carried by plaintiffs and forwarding carriers under joint tariffs, which tariffs, by an order of the Commission,[40] entered contemporaneously with the order here under view, have been ordered stricken from the files.

3. In the last mentioned order of the Commission, the Court herein found (Finding of Fact 17), that enforcement of the order by the Commission herein will deprive plaintiffs of a large part of their revenues. This finding is based upon the undisputed evi-
872 dence that under the said order, plaintiffs will be deprived of a large portion of their entire traffic, entailing an annual loss in revenue to them of over $600,000, and will severely and irreparably injure and impair their services, and in the case of some of them, will result in insolvency and bankruptcy.[41]

4. The statement in the motion that "counsel for one of the plaintiffs have advised they will so proceed with the establishment of these tariffs before the Supreme Court can hear and determine the appeal." states the facts fractionally. This statement was made as a part of a complete statement of plaintiffs' position, first made orally to counsel for the Commission, and at counsel's request, reduced to writing and sent to the Honorable Claude R. Porter, the

[40] In the report of the Commission here under review at sheet 4 it is stated: "These rates are published * * * primarily * * * to perpetuate in another form so-called divisions of purported joint rates of the freight forwarders * * * ordered stricken from our files."

[41] Testimony of Girard, Ab. 40, Tr. 170; Kossmann, Ab. 53, Tr. 121; Drexler, Ab. 57, Tr. 123, 124; Morgensen, Ab. 63, Tr. 127; Peich, Ab. 70, Tr. 130, 131; Whitehead, Ab. 81, Tr. 209; Nichols, Ab. 91, Tr. 227, 228.

Commissioner in charge of this proceeding, under date of November 16, 1939. A true and correct copy of this letter, containing the full statement, is attached hereto and made a part hereof as Exhibit "A."

5. The effective date of the order in Docket No. MC–2200, striking the said joint tariffs from the files of the Commission, has been postponed until January 10, 1940, and plaintiffs herein, following that order of postponement, have or will file supplements with the Commission voluntarily postponing the effective date of the tariffs here involved until January 1, 1940.

6. As shown in the letter above referred to and attached as Exhibit "A" hereto, it is not the plaintiffs who are seeking to disturb this status, and as a further evidence of their willingness to maintain the status, they hereby formally offer to consent to the stay order prayed herein, provided said order is conditioned upon the postponement by the Commission of the effective dates of the two orders in Docket No. MC–2200 and Ex Parte MC–31, described in said Exhibit "A," to a date subsequent to the final decree of the Supreme Court herein.

873 7. As found by the Court, there is no evidence or claim by any particular person or locality that he, it or they, or any description of traffic will be injured or damaged or occasioned any loss by the operation of the suspended tariffs. No one appeared before the Commission who claimed any injury, nor has any such claim been made in this Court. It is indeed strange that the defendants should ask this Court to stay a decree found by it to be justified on the record, merely because the Court did not agree with the Commission's view of the law. To wantonly injure and damage t laintiffs, as the evidence in this case shows and the Court found will result from the Commission's order, without serving any one or preventing injury to any one, is contrary to all principles of equity. The balance of convenience clearly requires that the petition for stay herein be denied. If the decree is affirmed by the Supreme Court, pursuant to a stay herein, plaintiffs will have been put out of business or subjected to irreparable damage, as shown by the evidence and found by the Court, and there will be no way in which such damage can be remedied. Upon the other hand, if the Supreme Court should reverse the decision in this case and the tariffs should become effective in the meantime, the order of the Commission will become effective and the tariffs can be cancelled immediately in pursuance to the Commission's authority, and no one will have suffered any injury.

Wherefore, plaintiffs and interveners respectfully pray that the petition of defendants herein be denied, or in the alternative, that

if the decree herein be stayed, that it be only upon the express condition above set forth.

JOHN R. TURNEY,
John R. Turney,
Solicitor for Plaintiffs.
ROBERT E. QUIRK,
Robert E. Quirk,
Solicitor for Interveners.

Washington, D. C., November 25, 1939.

874 *Exhibit A to answer*

NOVEMBER 16, 1939.

Re Chicago Heights Trucking Co. vs. United States, U. S. 907

DEAR COMMISSIONER PORTER: Tariffs in the above proceeding are published to become effective December 1 next. The Chief Counsel's office has inquired whether or not plaintiffs in the above suit will voluntarily postpone the effective date to a date subsequent to decision on appeal.

The plaintiffs consist of a large number of common carriers by motor vehicle all of whom are respondents to either the Rule to Show Cause Proceeding in Docket No. MC–2200 (Acme Case) or in Ex Parte MC–31. They are presently handling the traffic under joint tariffs with the several forwarders involved in the latter two dockets. Should an order become effective in either of these dockets striking these tariffs from the Commission's files, they will all lose a substantial part of their business, and some of them will be forced in bankruptcy, unless in the meantime the proportional rate tariffs have become effective. Obviously under such circumstances I can not, consistently with my professional obligation, consent to the further postponement of these latter tariffs.

However, the order in Docket No. MC–2200 is already under judicial review and doubtless a similar order in Ex Parte MC–31 will also be reviewed.

In view of the fact that all of these orders are in course of judicial review, it may appear desirable to the Commission to postpone the effective date of the orders in Dockets MC–2200 and Ex Parte MC–31 to a date subsequent to the final decision of the Supreme Court, in order that the status which has existed for a number of years be maintained.

Should this be so then plaintiffs in the above case will voluntarily postpone the effective date of the tariffs to the same date.

Yours very truly,

JOHN R. TURNEY.

Hon. CLAUDE R. PORTER
Commissioner,
Interstate Commerce Commission, Washington, D. C.
Cc to Chief Counsel Knowlton
Asst. Chief Counsel Reidy
Asst. Chief Counsel Payne

875 AFFIDAVIT OF P. F. PEICH

STATE OF ILLINOIS, *County of Cook, ss:*

In this cause comes P. F. Peich and upon oath states that he resides in Chicago Heights, Illinois, and is President of the Chicago Heights Trucking Company, a common carrier of property by motor vehicle in interstate commerce, and one of the plaintiffs herein; that he has read the foregoing answer and that the statements contained herein are true; he further states that a large part of his company's revenues is derived from traffic which will be carried under the tariffs here involved, and because of the fact that the present joint tariffs, under which the said traffic is now being carried, have been ordered stricken from the Commission's files, effective as of January 10, 1940, that on and after that date, his company will be unable to obtain or transport such traffic unless the tariffs here involved shall have become effective, in which event, said company's revenues would be greatly reduced and its carrier operations restricted and impaired, and it would be deprived of a substantial part of its business and income.

Dated at Chicago, Illinois, this 27th day of November 1939.

P. F. PEICH.

Subscribed and sworn to before me a notary public in and for the State and County first above written.

[SEAL]

L. J. FINGER,
Notary Public.

My commission expires 5/18/43.

876 AFFIDAVIT OF E. P. BYRNES, JR.

STATE OF ILLINOIS, *County of Cook, ss:*

In this cause comes E. P. Byrnes and upon oath states that he resides in Chicago, Illinois, and is President of the North Shore Motor Express Company, Inc., a common carrier of property by motor vehicle in interstate commerce, and one of the plaintiffs

herein; that he has read the foregoing answer and that the statements contained herein are true; he further states that a large part of his company's carrier revenues is derived from traffic which will be carried under the tariffs here involved, and because of the fact that the present joint tariffs, under which the said traffic is now being carried, have been ordered stricken from the Commission's files, effective as of January 10, 1940, that on and after that date, his company will be unable to obtain or transport such traffic unless the tariffs here involved shall have become effective, in which event, said company's revenues would be greatly reduced and its carrier operations restricted and impaired, and it would be deprived of a substantial part of its business and income.

Dated at Chicago, Illinois, this 27th day of November 1939.

E. P. BYRNES, Jr.

E. P. Byrnes, Jr.

Subscribed and sworn to before me a notary public in and for the State and County first above written.

[SEAL] L. J. FINGER,
Notary Public.

My commission expires 5/18/43.

878 In United States District Court

[Title omitted.]

Order denying petition for stay of final decree

November 27, 1939

This cause coming on to be heard upon the motion of the Defendants for stay of final decree pending appeal and the arguments of counsel being heard and concluded, it is ordered that the petition of Defendants for order staying final decree pending appeal be and the same is hereby denied.

879 And on, to wit, the 31st day of January, A. D. 1940, there was filed in the Clerk's office of said Court a certain Copy of Order of Interstate Commerce Commission, entered November 27, 1939, in words and figures following, to wit:

880 Before Interstate Commerce Commission
Washington

No. M-18748

November 27, 1939

Permission under Section 217 of the Motor Carrier Act, 1935, to postpone on less than statutory notice, matter under postponement.

In the Matter of Application No. B-26, of

CENTRAL STATES MOTOR FREIGHT BUREAU, INC., AGENT

Further Postpone Matter Under Postponement in I. & S. Docket No. M-247

Present: Clyde B. Aitchison, Commissioner, to whom the above entitled matter has been assigned for action thereon.

Ordered: That under the application dated November 24, 1939 (No. B-26), of carriers therein referred to that have lawfully appointed Central States Motor Freight Bureau, Inc., as agent to publish and file in their name, place, and stead tariffs and supplements thereto, the said agent is hereby authorized to publish and file with the Commission consecutively numbered supplements to Tariffs HF-I. C. C. Nos. B-138, B-142, and B-146, such supplements to postpone effective date of matter under postponement in I. & S. Docket No. M-247 until January 1, 1940, as set forth in the said application, and to be made effective not later than December 1, 1939 upon not less than one day's notice to the Commission and the general public by posting and filing in the manner required by law, and to bear the following notation:

"Issued on one day's notice under special permission of the Interstate Commerce Commission No. M-18748 of November 27, 1939."

It is further ordered: That this permission does not modify any outstanding formal order of the Commission, nor waive any of the requirements of its published rules relative to the construction and filing of tariff publications, nor modify any of the provisions of the Motor Carrier Act, 1935, except as to the notice to be given.

And it is further ordered: That this permission does not authorize the filing of tariffs or supplements in addition to, or other than those referred to herein and that it shall be void as authority for filing after November 30, 1939.

Dated at Washington, D. C., this 27th day of November 1939.

By the Commission, Commissioner Aitchison:

Mr. W. L. MEYERS, *Chief, Section of Tariffs,*
Central States Motor Freight Bureau, Inc., Agent,
616 South Michigan Avenue, Chicago, Illinois.

Secretary.

881 Omitted.

882 In United States District Court

[Title omitted.]

Praecipe for transcript of record

Filed January 5, 1940

To THE CLERK: You will please prepare a transcript of the record in the above-entitled cause to be transmitted to the Supreme Court of the United States pursuant to the appeal of said Court heretofore filed and allowed, and incorporate in said transcript the following:

1. Stipulation of September 7, 1939, as to hearing.
2. Bill of Complaint to set aside order of Interstate Commerce Commission of July 29, 1939, and Exhibits A, B, and C thereto.
3. Answer of United States.
4. Answer of Interstate Commerce Commission.

883 5. Intervening petition of Freight Forwarders' and Consolidators' Institute.

6. Answer of Interstate Commerce Commission to intervening petition.
7. Testimony introduced before the Interstate Commerce Commission at hearings dated February 24 and February 25, 1938, pages 1–241.
8. Exhibits Nos. 1 to 31, inclusive, introduced at hearings before the Interstate Commerce Commission.
9. Supplements Nos. 1, 2, 4, 5, 6, 7, 8, 9, and 11 to MF. I. C. C. B–138, postponing effective date of original tariff until December 1, 1939.
10. Supplements Nos. 1, 2, 4, 5, 6, 7, 8, 9, and 11 to MF. I. C. C. B–142, postponing effective date of tariff until December 1, 1939.
11. Supplements Nos. 1, 2, 4, 5, 6, 7, 8, 9, and 11 to MF. I. C. C. B–146, postponing effective date of tariff until December 1, 1939.
12. Transcript of oral argument before the Interstate Commerce Commission on February 23, 1939, pages 242–352.
13. Order of Interstate Commerce Commission of January 6 1936, and Tariff Circular M. F. No. 1.
14. Supplement No. 1 to Tariff Circular MF. No. 1.
15. Tariff Circular MF No. 2.
16. Postponement order of Interstate Commerce Commission dated September 13, 1939.

884 17. Postponement order of Interstate Commerce Commission dated November 7, 1939.

18. Petition for reconsideration before the Interstate Commerce Commission, and brief in support thereof.

19. Plaintiffs' requested findings of fact and conclusions of law. (Not filed—See #21.)
20. Defendants' requested findings of fact and conclusions of law.
21. Findings of fact and conclusions of law entered by District Court.
22. Final decree.
23. Petition for appeal.
24. Notice of appeal and acknowledgment of service.
25. Assignment of errors.
26. Order allowing appeal.
27. Notice to Attorney General of the State of Illinois.
28. Citation on appeal.
29. Statement of jurisdiction of Supreme Court, together with notice and acknowledgment of service.
30. Petition for order staying final decree.
31. Answer of plaintiffs to petition for stay.
32. Order of District Court dated November 27, 1939, denying stay of final decree pending appeal.
33. Order of Commisison of November 27, 1939, permitting postponement of effective date of tariffs until January 1, 1940.
34. Praecipe for transcript of record and acknowledgment thereof.
35. Clerk's certificate dated ——— —, 1940.

885 WILLIAM J. CAMPBELL,
United States Attorney.
THURMAN ARNOLD,
Assistant Attorney General.
FRANK COLEMAN,
Special Assistant to the Attorney General, for the United States of America.
DANIEL W. KNOWLTON,
E. M. REIDY,
For the Interstate Commerce Commission.

Service of the foregoing praecipe for transcript of record and the receipt of a copy thereof are hereby acknowledged this 5th day of January 1940.

JOHN R. TURNEY,
Attorney for Plaintiffs-Appellees.
R. E. QUIRK,
Attorney for Intervening Plaintiffs-Appellees.

[Clerk's certificate to foregoing transcript omitted in printing.]

888 [Citation in usual form showing service on J. R. Turney and R. E. Quirk filed Jan. 5, 1940, omitted in printing.]

890 In Supreme Court of the United States

Statement of points to be relied upon and designation of the record to be printed

Filed February 26, 1940

Come now the appellants and say that they will rely upon the points made in their assignments of error in brief and oral argument before this Court on their appeal in the above-entitled cause.

Appellants further state that the entire record in this cause as filed in this Court is necessary and should be printed to enable the Court to consider the points set forth above, except in lieu of printing items Nos. 9, 10, and 11 of the praecipe, counsel stipulate that the respective tariffs were voluntarily postponed by appellees until April 11, 1940. Item No. 19 of the praecipe need not be printed.

February 17, 1940.

ROBERT H. JACKSON,
Solicitor General.
WILLIAM J. CAMPBELL,
United States Attorney.
THURMAN ARNOLD,
Assistant Attorney General.
FRANK COLEMAN,
Special Assistant to the Attorney General,
for the United States of America.
DANIEL W. KNOWLTON,
E. M. REIDY,
For the Interstate Commerce Commission.

Service of a copy of this statement of points to be relied upon and designation of the record to be printed is acknowledged this 17th day of February 1940.

J. R. TURNEY,
R. E. QUIRK,
Counsel for Appellees.

[File endorsement omitted.]

[Endorsement on cover:] File No. 44131. N. Illinois. D. C. U. S. Term No. 724. The United States of America and Interstate Commerce Commission, Appellants vs. Chicago Heights Trucking Co., et al. Filed February 14, 1940. Term No. 724 O. T. 1939.

U. S. GOVERNMENT PRINTING OFFICE 1940

FILE COPY

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CHARLES ELMORE CROPLEY
CLERK

No. 724

In the Supreme Court of the United States

OCTOBER TERM, 1939

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

CHICAGO HEIGHTS TRUCKING CO., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

STATEMENT AS TO JURISDICTION

In the District Court of the United States for the Northern District of Illinois, Eastern Division

No. 907

CHICAGO HEIGHTS TRUCKING CO., ET AL., PLAINTIFFS,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

STATEMENT AS TO JURISDICTION ON APPEAL

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, the United States and the Interstate Commerce Commission, appellants, submit herewith their statement showing the basis of the jurisdiction of the Supreme Court of the above-entitled case on appeal.

A. The statutory jurisdiction of the Supreme Court to review by direct appeal the final decree complained of is conferred by:

Section 5 of the Commerce Court Act (c. 309, 36 Stat. 539; U. S. Code, Suppl. III, Tit. 28, Sec. 45a).

Section 238 of the Judicial Code as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936, 938, par. (4); U. S. Code, Tit. 28, Sec. 345).

211363—40

Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 210, 219; U. S. Code, Tit. 28, Sec. 45 and 47a, Suppl. III).

B. The final decree sought to be reviewed was entered November 7, 1939. The petition for appeal was filed and the order allowing the appeal was entered January 5, 1940.

C. Plaintiffs, 41 common carriers by motor vehicle subject to the Motor Carrier Act, 1935, and to the jurisdiction of the Interstate Commerce Commission thereunder, bring this suit to set aside the Commission's order of July 29, 1939, which, as amended, requires the carriers on or before November 10, 1939, to cancel out certain tariffs on the ground that such tariffs were unlawful. The tariffs named proportional rates[1] for the transportation of l. t. l. (less than truckload) shipments (all freight) between outlying marketing areas and named concentration points (Chicago, Indianapolis, South Bend, Muncie, Fort Wayne, and Evansville) immediately preceding or following the transportation of the shipment in a truckload or carload consignment.

---

[1] In the report herein of July 29, 1939, the Commission defined a proportional rate as follows: "* * * a proportional rate is one which applies to a part of a through transportation which is entirely within the jurisdiction of the Interstate Commerce Act, and that it means a part of, or the remainder of, a through rate, or it means nothing at all. Clearly, the proposed rates do not come within this definition of a proportional rate."

Tariffs similar to those involved in the Commission's order herein were filed in the summer of 1937 and rejected by the Bureau of Motor Carriers in a letter dated September 11, 1937, "upon several grounds" (Ex. 17, p. 1). The tariffs were subsequently refiled to become effective on December 1, 1937, and January 15, 1938. The Commission suspended the tariffs on its own motion from time to time and assigned the matter of their validity to an examiner for hearing. After elaborate proceedings, including full hearings and the consideration of voluminous briefs, Division 5 of the Commission, on December 14, 1938, found the proposed tariffs unlawful and directed their cancelation. Upon petition of complainants herein for reopening, the Commission as a body (11 members) heard oral arguments and on July 29, 1939, issued its report on reconsideration, once more finding the tariffs unlawful and directing their cancelation. Docket Investigation & Suspension M–247, *Proportional Rates between Chicago and Wisconsin Points,* 10 M. C. C. 556, 17 M. C. C. 573.

The plaintiffs filed this suit on September 14, 1939, praying that the Court annul and enjoin the Commission's order of July 29, 1939, on the principal grounds that:

1. The order is void because it interferes with the carriers' managerial judgment;
2. The Commission failed to make certain findings, and the findings it did make are insufficient to support its order;

3. The tariffs are in accord with law, are not unreasonable, discriminatory, or otherwise unlawful in any respect, and the Commission's action in ordering their cancelation was arbitrary, and

4. The order of the Commission is without evidence and contrary to the undisputed evidence.

The answers of the United States and the Interstate Commerce Commission denied the material allegations of the complaint.

Final hearing was held before a statutory court of three judges on October 9, 1939, and findings of fact, conclusions of law, and final decree were filed November 7, 1939, holding the Commission's order invalid and granting the relief sought. No written opinion was filed. The final decree permanently enjoins, annuls, and sets aside the Commission's order.

D. The questions presented are substantial and of public importance. Whether the courts have power to substitute their judgment for that of the Commission upon matters purely administrative appears to us to be the important question.

E. The following cases sustain the jurisdiction of the Supreme Court to review the decree of the district court:

Atlantic Coast Line R. Co. v. *United States*, 284 U. S. 288.

Chicago Junction Case, 264 U. S. 258.

Ches. & Ohio Ry. Co. v. *United States*, 283 U. S. 35.

United States v. *Chicago, Milwaukee, St. Paul & Pacific R. Co.*, 282 U. S. 311.

N. Y. Central Securities Co. v. *United States*, 287 U. S. 12.

United States v. *Maher*, 307 U. S. 148.

Copy of the findings of fact, conclusions of law and final decree entered by the District Court are appended hereto.

ROBERT H. JACKSON,
Solicitor General.
WILLIAM J. CAMPBELL,
United States Attorney.
THURMAN ARNOLD,
Assistant Attorney General.
FRANK COLEMAN,
Special Assistant to the Attorney General,
For the United States of America.
DANIEL W. KNOWLTON,
E. M. REIDY,
For the Interstate Commerce Commission.

In the District Court of the United States for the Northern District of Illinois, Eastern Division

No. 907

CHICAGO HEIGHTS TRUCKING COMPANY, ET AL., PLAINTIFFS

vs.

UNITED STATES OF AMERICA, and THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In the above entitled cause, the Court makes the following

FINDINGS OF FACT

1. Plaintiffs are common carriers of property by motor vehicle and subject to the Motor Carrier Act, 1935, and operate over public highways in the States of Illinois, Wisconsin, and Indiana.

2. In October and December, 1936, plaintiffs caused three tariffs to be filed with the Interstate Commerce Commission, naming rates on less-than-carload interstate shipments of "all freight" (with certain exceptions not necessary to name) immediately preceding or following transportation thereof as part of a consolidated truckload or carload con-

signment between (a) Chicago, Illinois, upon the one hand, and points in Wisconsin and Illinois, upon the other, and (b) Indianapolis, South Bend, Fort Wayne, Muncie, and Evansville, Indiana, upon the one hand, and points in Indiana within the respective trade areas of each of said cities, upon the other.

3. The aforesaid tariffs were suspended by the Commission, on its own motion, without complaint, by its orders of November 29, 1937, and January 14, 1938, and following the hearing provided in the Motor Carrier Act and a report by the examiner recommending that the tariffs be found lawful, a division of the Commission found the rates named in the tariffs to be unlawful and ordered the tariffs cancelled. Upon rehearing, the entire Commission affirmed this order, but upon findings substantially different from those made by the division.

4. While the tariffs are not restricted and apply to the traffic of all shippers, the principal traffic which will be carried under the suspended rates is what is called by the Commission "freight forwarder traffic." This traffic consists of individual less-than-carload shipments of freight originating or terminating at points far distant from the lines and routes of plaintiffs, and carried in a coordinated railroad and motor-carrier service under the control and direction of common carrier organizations known as "freight forwarders."

5. The method by which said freight is carried is as follows:

Plaintiffs jointly with other carriers, forwarder, rail and motor, maintain a nation-wide sales and service organization whereby individual less-than-carload shipments are collected at the door of the shipper from all producing points in each marketing area, concentrated by motortruck at the market center of the area, consolidated with other similar shipments, and moved in consolidated carlot or truck-lot consignments to a break-bulk station located at the center of the consuming trade area from which the individual less-than-carload shipments are distributed to the door of the consignee. Plaintiffs perform the concentration and distribution service, between concentration and break-bulk stations located in the cities named in paragraph 2, supra, and points within the trade area of each.

6. This coordinated transportation of plaintiffs has resulted in a more complete, dependable and reliable service generally superior to either all-rail or all-truck competitive services, as a result of which it is widely patronized by shippers.

7. The "forwarder traffic," which would be carried under these tariffs, at the present time and for a number of years prior, is and was carried under joint tariffs of plaintiffs, freight forwarding carriers, and other motor carriers, now on file with the Commission, naming through rates on the less-than-carload shipments from ultimate point of

origin to ultimate destination, which tariffs were ordered stricken from the files of the Commission by an order issued at about the same time as the order which this proceeding seeks to annul and enjoin.

8. Plaintiffs' compensation, in the form of divisions of the joint rates described in paragraph 7, presently and formerly received for their services in connection with the transportation of such traffic, is practically identical with the compensation which plaintiffs would receive for like services under the suspended tariffs.

9. Plaintiffs contemporaneously maintain what are called "local rates" upon less-than-carload freight, originating or terminating at the points named in paragraph 2 hereof, which differ from the suspended rates in that such freight shipments are classified into a number of different classes, each taking a different rate, some of which rates are higher and some lower than the suspended rates, which latter rates apply on all freight, regardless of classification. The average revenue per 100 pounds derived by plaintiffs from such local rates, upon the whole, is less than the average revenue per 100 pounds which will be produced by the suspended rates for movement between the same points.

10. The service which will be provided by plaintiffs under the suspended rates is identical with the service which they now perform in the carriage of through interline shipments under existing joint

tariffs with other motor carriers with whom plaintiffs connect, and the suspended rates are substantially higher than the divisions which plaintiffs receive for their services for the carriage of such interline traffic.

11. The service which plaintiffs will be required to provide under the suspended tariffs is different and less than it is required to provide for traffic moving at its tariffs of local rates, in that (a) no solicitation or billing is necessary; (b) but one instead of two terminal services (collection, delivery, and station platform handling) is required; and (c) relatively fewer deliveries are required; and (d) the expense of providing such service under the suspended tariffs will be less than the expense of the service required in the transportation of such local traffic.

12. The traffic which will be handled under the suspended rates consists of through interline shipments, and either originates or terminates on plaintiffs' lines, whereas the traffic handled at plaintiffs' local rates consists of local shipments which both originate and terminate on plaintiffs' lines.

13. Movement of the traffic which will be carried at the suspended rates is affected and influenced by commercial, economic, and competitive conditions, applicable to long-distance commerce between points on plaintiffs' routes and points in all other states, whereas the movement of plaintiffs' local traffic is influenced by the local commer-

cial conditions applicable in the restricted trade areas about each of the cities named in paragraph 2.

14. There is no evidence or claim that any particular person, port, gateway, locality, or description of traffic will be injured or damaged, or occasioned any loss by operation of the suspended tariffs.

15. The suspended tariffs explicitly state the applicable rates and accurately describe the service to be rendered (and the rules applicable thereto) for such rates.

16. The suspended tariffs plainly state the charges which are proposed to be made thereby and the time when such charges will take effect.

17. Enforcement of the order of the Commission will deprive plaintiffs of a large and profitable part of their revenues.

18. Plaintiffs have duly invoked and exhausted all their rights and remedies at law before seeking relief in equity.

19. The case was submitted to the Court at the conclusion of final hearing, the Court having received in evidence certified copies of the transcript of testimony, exhibits, petitions, and tariff rules which constituted the record before the Commission.

The Court thereupon announces the following

CONCLUSIONS OF LAW

I. Section 216 (d) of the Motor Carrier Act does not condemn as unlawful rates which discriminate

in favor of a person or traffic without unjustly discriminating against any particular person, port, gateway, locality, or description of traffic.

II. The compensation to be charged under the suspended tariffs is not less than that charged under plaintiffs' tariffs of local rates.

III. The service to be rendered by plaintiffs under the suspended tariffs is unlike service rendered by plaintiffs in the transportation of local traffic.

IV. The traffic to be carried by plaintiffs under the suspended tariffs is unlike traffic carried by them under their tariffs naming local rates.

V. The traffic to be carried by plaintiffs under the suspended tariffs will be transported under circumstances and conditions dissimilar to those under which local traffic is carried.

VI. The suspended rates do not unduly or unreasonably prefer or advantage any particular person, port, gateway, locality, or description of traffic in any respect whatever, nor subject any particular person, port, gateway, locality, or description of traffic to any unjust discrimination, undue or unreasonable prejudice or disadvantage in any respect whatsoever, in violation of section 216 (d) or any other section of the Motor Carrier Act, 1935.

VII. The suspended tariffs do not not contravene section 216 (d), 217 (a), 217 (c) or any other section or provision of the Motor Carrier Act, 1935.

VIII. The order of the Commission is based upon an erroneous and unlawful interpretation of

sections 216 (d), 217 (a), and 217 (c) of the Motor Carrier Act, 1935.

IX. The finding of the Interstate Commerce Commission that the above-described tariffs are unlawful is not supported by substantial evidence, and is contrary to the evidence.

X. Enforcement of said order of the Commission will irreparably injure plaintiffs.

XI. The order of the Interstate Commerce Commission, directing the cancellation of the suspended tariffs, is arbitrary, unlawful, and void.

XII. The relief for which plaintiffs pray should be granted.

OTTO KERNER,
United States Circuit Judge.
CHARLES E. WOODWARD,
United States District Judge.
JOHN P. BARNES,
United States District Judge.

U. S. GOVERNMENT PRINTING OFFICE: 1940

APR 8 1940
CHARLES ELMORE CROPLEY

No. 724

In the Supreme Court of the United States

OCTOBER TERM, 1939

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

CHICAGO HEIGHTS TRUCKING CO. ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATE FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE APPELLANTS

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In the Supreme Court of the United States

OCTOBER TERM, 1939

No. 724

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

CHICAGO HEIGHTS TRUCKING CO. ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE APPELLANTS

OPINIONS BELOW

The specially constituted district court rendered no opinion. Its findings of fact and conclusions of law appear at R. 490. There were two reports of the Commission. That of Division 5 (R. 29) is reported in 10 M. C. C. 556; that of the full Commission (R. 13) is reported in 17 M. C. C. 573.

JURISDICTION

The final decree of the district court (R. 494) was entered November 7, 1939. The petition for appeal was filed and allowed January 5, 1940. Prob-

able jurisdiction was noted by this Court, March 4, 1940. The jurisdiction of this Court rests on Section 5 of the Commerce Court Act, c. 309, 36 Stat. 539, 28 U. S. C., Supp. III, Section 45a; Section 238 of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938, par. (4), 28 U. S. C., Section 345, and the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 210, 219, 28 U. S. C., Supp. III, Sections 45, 47a.

QUESTIONS PRESENTED

1. Whether Section 216 (d) of Part II of the Interstate Commerce Act incorporates the "rule of equality" contained in Section 2 of Part I of the Act.

2. Whether the Interstate Commerce Commission acted within the scope of its authority in condemning certain tariffs sought to be filed by carriers by motor vehicle as unlawful and ordering their cancellation.

STATUTE INVOLVED

The statute involved is Part II of the Interstate Commerce Act, otherwise known as the Motor Carrier Act, 1935, 49 Stat. 543, 49 U. S. C., Supp. I, §§ 301–327. Pertinent provisions of the statute are set forth in the appendix, *infra*, p. 31.

STATEMENT

The Proceedings Below

Appellees comprise 41 common carriers by motor vehicle subject to the jurisdiction of the Inter-

state Commerce Commission under Part II of the Interstate Commerce Act.

In 1937, appellees filed tariffs applicable to certain traffic by motortruck which were rejected by the Bureau of Motor Carriers in a letter dated September 11, 1937 (Ex. 17, R. 341). Appellees thereupon made a number of changes in the tariffs and refiled them to become effective on December 1, 1937, and January ~~18~~ 1938 (R. 47). The Commission, on its own motion, suspended the tariffs and ordered an investigation (R. 47). A hearing was held before an examiner who, on August 5, 1938, recommended that certain of the items of the proposed tariffs be ordered cancelled, but that as to the remainder of the schedules an order discontinuing the proceedings be entered (R. 56). Thereupon, argument was had before Division 5 of the Commission, which on December 14, 1938, found the proposed tariffs unlawful and directed their cancellation (R. 29ff.). One Commissioner dissented. Upon petition of appellees for reopening, the full Commission (11 members) heard oral argument, both on behalf of appellees and on behalf of various interveners appearing in opposition to the proposed tariffs. On July 29, 1939, the Commission issued a report (with two Commissioners dissenting and one not participating), finding the tariffs unlawful and directing their cancellation (R. 13 ff.).

On September ~~14~~ 6, 1939, appellees filed this suit

seeking an annulment of the Commission's order on the grounds that the findings of the Commission were inadequate to support its order; that, contrary to the Commission's determination, the tariffs were in accordance with law, not unreasonable, discriminatory, or otherwise unlawful, and that the order of the Commission was unsupported by evidence. On November 7, 1939, the specially constituted district court, without rendering any opinion, entered findings of fact and conclusions of law substantially as presented by appellees (R. 490) and entered a final decree permanently enjoining the Commission from cancelling the proposed tariffs (R. 494).

The Proposed Tariffs

The tariffs in controversy (R. 204 ff.) were denominated as "proportional" rates by appellees and fall roughly into two categories:

(1) The first category includes rates for l. t. l. (less than truckload) shipments, all freight between outlying marketing areas and named concentration points (Chicago, Indianapolis, South Bend, Muncie, Fort Wayne, and Evansville) immediately preceding or following the transportation of the shipment in a truckload or carload consignment.[1] These rates are the most important

[1] These rates are described as follows in the tariffs: "(a) 'All freight' [except for certain named commodities] which has been transported to the origin station named herein, as a part of a truckload consignment or carload consignment moving under tariffs or schedules lawfully on file

ones in controversy here. Their significant characteristics are these: (a) They are lower, generally speaking, than the applicable local rates for the same movement of the same commodity. To illustrate—a shipper in Racine, Wisconsin, who makes an l. t. l. first class shipment by truck to a consignee in Chicago, pays 48 cents per hundred pounds (R. 329, Ex. 14). Under the proposed tariffs if the same shipment is made to a consignee beyond Chicago and is so shipped that it becomes part of a consolidated carload or truckload at Chicago, the rate will be 30 cents for the distance from Racine to Chicago (R. 212, Ex. 1). (b) The sole justification for the discrimination exhibited by these rates is that immediately following the carriage under the proposed rate the shipment will be consolidated into a carload or truckload for further movement or that immediately preceding the carriage under the proposed rate the shipment had formed part of a carload or truckload. (c) As will be shown in more detail later, these rates while ostensibly open to the public can only be taken advantage of by certain organizations known as for-

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with the Interstate Commerce Commission and immediately reshipped in the original package as an l. t. l. shipment; or

"(b) 'All freight' [except for certain named commodities] which is to be transported to the destination station named herein as an l. t. l. shipment, and immediately reshipped in the original package as part of a truckload consignment or carload consignment moving under tariffs or schedules lawfully on file with the Interstate Commerce Commission" (R. 209, Item 5).

warding companies and by large shippers. (d) These rates are "all freight" rates as contradistinguished from "class" or "commodity" rates—i. e., all freight (with certain named exceptions) which comes within the described movement will move at the same rate irrespective of the value or character of the commodity.

(2) The second category is of minor significance. It includes certain quantity and truckload rates. The truckload rate proposed is one of $25 per truck between Chicago and Milwaukee for all freight where the movement between these two points immediately precedes or follows the transportation of the shipment in a truckload or carload consignment (R. 212, Ex. 1, Item 35). The proposed quantity rates provide a flat rate of 25 cents per hundred pounds for 10,000-pound shipments and 20 cents per hundred pounds for 20,000-pound shipments complying with certain conditions (R. 212, Ex. 1, Note 2). Appellees appear to have made no attempt to justify these rates; they were found to be unlawful by the trial examiner; and they were apparently not pressed before the district court. Nevertheless, that court did not differentiate these rates from the l. t. l. rates and its decree covers the entire schedule.

It is conceded by appellees that the principal traffic which will be transported under the proposed tariffs is what is known as "forwarder" traffic (R. 5). The problem of the forwarder is

the occasion for the introduction of these tariffs and is of such decisive importance in the case that some consideration is necessary in order to understand the issues involved.

The Problem of the Forwarder

Forwarders (or forwarding companies) are middlemen of the transportation business. The forwarding company solicits less-than-carload shipments, secures their transportation to a concentration point where they are concentrated into carloads, and then secures the transportation to destination by the most convenient means. The forwarder pays the carload rate and receives payment from the shippers at or approximately the less-than-carload rate. It thus operates within the spread between what may be called the wholesale (carload) rate and the retail (l. c. l.) rate. *Freight Forwarding Investigation*, 229 I. C. C. 201, 209. There are some 20 forwarders in the country, three of which are of major proportions receiving a total of about $102,000,000 in revenue in 1936. *Ibid.*, at 203. Several of the larger forwarding companies are connected by various financial ties to railroads. *Ibid.*, at 204–207.

The Interstate Commerce Commission has recently conducted two important proceedings with reference to forwarding companies. In *Acme Fast Freight, Inc.*, 8 M. C. C. 211, the Commission held that the forwarders are not common or contract carriers by motor vehicle within the meaning

of Part II of the Act, that they are not entitled to certificates of convenience and necessity, that they cannot participate in joint rates with common carriers by motor vehicle, and that they cannot utilize contract carriers by motor vehicle to transport the shipments for which they assume responsibility. The order of the Commission has been sustained by the District Court for the Southern District of New York. *Acme Fast Freight, Inc.*, v. *United States*, 30 F. Supp. 968; appeal docketed March 26, 1940, No. 840.

In the *Freight Forwarding Investigation*, 229 I. C. C. 201, the Commission found that the freight-forwarding system was subject to many abuses through discriminations in favor of the forwarders by the railroads, and ordered these abuses corrected. It found further that while the forwarder has characteristics of a common-carrier transportation agency, it is not a common carrier either by rail or motor vehicle as that term is used in the Act and that the forwarders are not subject to the provisions of the Act. It also found that the forwarder is not an express company. Lastly it recommended that the rail lines attempt by appropriate cooperative effort to undertake the forwarder business themselves, and if they should fail to do so, that legislation be enacted to bring the forwarder under regulation. *Ibid.*, at 304.[2]

[2] Such legislation is now pending. See S. 2009, 76th Cong., 1st Sess.

Prior to the Commission's decision in the *Acme* case the forwarding companies had filed tariffs containing joint rates between the forwarders and motor carriers, out of which the carriers receive a division which differs from their regularly published rate charged other shippers. 8 M. C. C. at 225. The *Acme* decision ordered these arrangements cancelled and it was to meet this situation that the carriers here undertook to file the so-called proportional rates here in controversy (R. 5). Appellees concede that the rates in the suspended schedules herein are identical with the "divisions" received by the carriers under the joint rates found by the Commission to be unlawful (R. 6).

The Commission's Findings

The Commission's ultimate finding was that "the proposed less-than-truckload rates would be unlawful in that they would violate Sections 216 (d), 217 (a), and 217 (c) of Part II of the Act" (R. 20). Its principal subordinate findings were that "these rates are published as proportional rates primarily as a matter of expediency to serve the purpose of certain freight forwarders and to perpetuate in another form so-called divisions of purported joint rates of the freight forwarders" (R. 15); that the rates do not come within the definition of proportional rates (R. 15) and that the tariffs naming them "are not what they purport to be, are lacking in clarity and definiteness," and therefore are in violation of Sections 217 (a) and

217 (c) of Part II of the Act (R. 17); that insofar as the proposed rates are published to apply in connection with consignments transported under schedules of contract carriers, they are inconsistent with appellees' status as common carriers since common carriers and contract carriers may not join with each other in arrangements for through transportation (R. 18); that the proposed rates constitute a device whereby the forwarders and possibly a very few large shippers who can avail themselves of those rates will be afforded transportation at rates lower than the rates which will be charged certain other shippers under substantially similar circumstances and conditions, in violation of Section 216 (d) (R. 19); that the tariffs contain no adequate policing rules (R. 19); that there is no evidence in the record that the owners of property transported under the proposed rates would obtain any saving in transportation charges (R. 20).

SUMMARY OF ARGUMENT

Section 216 (d) of Part II of the Interstate Commerce Act incorporates the "rule of equality" contained in Section 2 of Part I. Congress enacted the "rule of equality" for motor carrier regulation by including the words "unjust discrimination" in 216 (d). The "rule of equality" was the great purpose of the Interstate Commerce Act. *New Haven R. R.* v. *I. C. C.*, 200 U. S. 361, 391; *Louisville & Nashville R. Co.* v. *United States*, 282 U. S. 740, 749. Congress did not omit from a compre-

hensive regulation of motor carriers the very cornerstone of the act to regulate rail carriers. It was unnecessary for Congress to reenact the whole of Section 2 because the words "unjust discrimination" constitute a term of art. The legislative history supports this conclusion.

The Commission properly found that the proposed rates violate Section 216 (d). The proposed less-than-truckload rates are lower than the appellees local rates and are thus obviously discriminatory. The Commission did not find persuasive the contention of appellees that the discrimination was justified by substantial dissimilarity of circumstances and conditions. The Commission properly drew inferences unfavorable to the rates on the basis of the evidence in the record.

The Commission's duty in passing upon proposed rates is an administrative one which must be discharged within broad limits of discretion and judgment. *Swayne & Hoyt* v. *United States,* 300 U. S. 297, 304. The Commission's duty transcends the narrow interests of the shippers and carriers involved in the particular case and involves a consideration of the adequacy of the transportation system as a whole. The Commission has historically construed the "rule of equality" with the greatest strictness. It was particularly justified in refusing to permit a relaxation of that rule in this case because of the problems raised by the situation of the forwarders. In this case the Commission was presented with a series of rates intended to

perpetuate advantages which the forwarders had previously enjoyed, some of these advantages being of doubtful legality. The proposed rates are novel in form; their implications to shippers, motor carriers, and rail carriers are unknown; they may create vested interests which will complicate further attempts to deal with the forwarder problem. All these are factors which the Commission is competent to take into consideration in refusing to relax a rule whose strict maintenance has been one of the fundamental principles of its half century of life. The necessary "rational basis" for the Commission's action is clearly established. *Mississippi Valley Barge Line Co.* v. *United States*, 292 U. S. 282, 286; *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125.

The finding of the Commission that the tariffs do not contain adequate policing rules was properly considered by the Commission as one among the various defects which made for the invalidity of the tariffs as a whole.

There is no warrant for setting aside the Commission's finding that the proposed tariffs violate Sections 217 (a) and 217 (c) because they are "lacking in clarity and definiteness." If appellees believe that they can escape the strictures of statute and regulations by adopting a different name for the rates, their obvious remedy is to refile the rates.

In any event, the decree of the court below is too broad in that its injunction extends to the Com-

mission's order finding invalid the proposed quantity and truckload rates. These rates were not justified by appellees and they were found to be unlawful on three different occasions. Even if the finding of the lower court on the lawfulness of the l. t. l. rates should be affirmed by this Court, the decree should be modified to permit the Commission's order to stand with respect to the quantity and truckload rates.

ARGUMENT

I

SECTION 216 (D) OF PART II OF THE ACT INCORPORATES THE "RULE OF EQUALITY" CONTAINED IN SECTION 2 OF PART I

The Commission found that the proposed rates would violate Section 216 (d) of Part II in that they "constitute a device whereby the forwarders * * *, and possibly a few large shippers who can avail themselves of these rates, will be afforded transportation at rates lower than the rates which will be charged certain other shippers under substantially similar circumstances and conditions" (R. 19).[3] It construed the prohibition against "un-

[3] It has long been settled that in a Section 2 case the Commission need not find the existence of competition between traffic moving under the alleged unlawful rate and other traffic nor injury to any particular person or traffic. *I. C. C.* v. *Alabama Midland R. Co.*, 168 U. S. 144. The Commission has held in a number of cases that in a Section 3 case it must be shown that the complainant suffers injury

just discrimination" in that Section as being in this respect similar in purpose to Section 2 of Part I "that is, to insure equality of rates as to all and to prevent favoritism." There is thus presented at the outset of this case a question of statutory construction.

Section 216 (d) reads in part as follows:

> It shall be unlawful for any common carrier by motor vehicle engaged in interstate or foreign commerce to make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, gateway, locality, or description of traffic in any respect whatsoever, or to subject any particular person, port, gateway, locality, or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever. . . .

The language here is identical word for word with Section 3 (1) of Part I, with the exception of the words "unjust discrimination" which occur

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by reason of the discrimination. See e. g. *Duluth Chamber of Commerce* v. *Ry. Co.*, 122 I. C. C. 739. It cannot be said however that the necessity of showing injury exists in cases where the Commission acts on its own motion on behalf of the public. Thus in *Louisville & Nashville R. Co.* v. *United States*, 282 U. S. 740, an order of the Commission under both Sections 2 and 3 was upheld despite absence of a showing of injury.

[4] Division 5 had previously reached a similar construction of Section 216 (d). *Arrangements-Arrow Carrier Corp. and Duplan Silk Corp.*, 4 M. C. C. 657, 677.

towards the end of Section 216 (d). The words "unjust discrimination" appear, however, in Section 2 of Part I which reads as follows:

> That if any common carrier subject to the provisions of this part shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this part, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

Section 2 sets forth the "rule of equality" of which this Court has said: "*It cannot be challenged that the great purpose of the act to regulate commerce,* whilst seeking to prevent unjust and unreasonable rates, *was to secure equality of rates as to all and to destroy favoritism,* these last being accomplished by requiring the publication of tariffs and by prohibiting secret departures from such tariffs, and forbidding rebates, preferences, and all other forms of undue discrimination." *New Haven R. R.* v. *I. C. C.*, 200 U. S. 361, 391 [italics supplied]. "The legislative history of the Interstate

Commerce Act shows clearly that the evil of discrimination was the principal thing aimed at." *Louisville & Nashville R. Co.* v. *United States*, 282 U. S. 740, 749.

The evil of discrimination between shippers was rife before the enactment of the Interstate Commerce Act. "Probably no other aspect of railroad transportation was as influential in compelling regulation by the Federal Government as this most elementary of abuses." Sharfman, *The Interstate Commerce Commission*, III–B, p. 361. The prohibition against undue prejudice or disadvantage contained in Section 3 is of relatively minor consequence compared to the rule of equality of Section 2. "Unless like traffic movements pay like charges, there is slight excuse for great concern over the differential treatment of dissimilar commodities and hauls and the undue preferences and prejudices to which it may lead." *Ibid.*, at p. 360.

It would have been strange indeed if Congress had omitted from a comprehensive regulation of motor carriers the very cornerstone of the act to regulate rail carriers.[5] Congress made no such omission. It affirmatively enacted the rule of equality by including the words "unjust discrimination" in Section 216 (d).

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[5] The "rule of equality" is of considerable antiquity. Section 2 was patterned after the so-called Equality Clause (Sec. 90) of the English Railway Clauses Consolidation Act of 1845. *Interstate Commerce Commission* v. *Delaware, L. & W. R. R.*, 220 U. S. 235, 253.

It was argued in the court below that if Congress wanted to include Section 2 in the Motor Carrier Act, it would have reenacted its provisions in full. This argument overlooks the fact that a repetition *ipsissimis verbis* of Section 2 was wholly unnecessary. It will be noted that this Section begins by setting forth various practices which might be indulged in by a common carrier and concludes by saying that "such common carrier shall be deemed guilty of unjust discrimination which is hereby prohibited and declared to be unlawful." The words "unjust discrimination" are thus completely described in that section and constitute a term of art well understood by those versed in the problem of rate regulation.

Appellees in effect contend that the words "unjust discrimination" are pure surplusage. Conceivably Congress may use words which have no meaning, though every presumption is against such a conclusion. *Market Co. v. Hoffman*, 101 U. S. 112, 115; *Ex parte The Public National Bank of New York*, 278 U. S. 101, 104. But it cannot be claimed that such is the result where Congress has deliberately inserted a phrase so significant to rate regulation and with so long and important a history.

There is nothing in the legislative history which casts any doubt on this conclusion. On the contrary, the Federal Coordinator of Transportation, in his report recommending the enactment of a bill to regulate motor carriers, stated: "Section

315 [substantially identical with Section 216 of the present Act[7]] provides substantially the same regulation of rates, fares, and charges of common carriers by motor vehicle as is applicable to rail carriers."[8] Congress, having this statement of the Coordinator before it, could not possibly have intended to omit one of the most important rules of rate regulation.[9]

II

The Commission Had Authority to Determine That the Proposed Rates Were in Violation of the Act

A. THE COMMISSION PROPERLY FOUND THAT THE PROPOSED RATES VIOLATE SECTION 216 (D)

The major controversy centers about the less-than-truckload rates[9] which the Commission found

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[7] Section 315 (b) of the Coordinator's draft bill is identical with the present Section 216 (d).

[8] Regulation of Transportation Agencies, Letter from the Chairman of the Interstate Commerce Commission Transmitting a Report of the Federal Coordinator of Transportation, Sen. Doc. No. 152, 73d Cong., 2d Sess. (1934).

[9] The Federal Coordinator was Commissioner Eastman, who dissented in the instant case. He did not disagree with the majority of the Commission that the rule of equality is contained in Section 216 (d), but he did not expressly agree with this construction (R. 23). It is significant, however, that Commissioner Eastman did join in the ruling of Division 5 in a previous case which construed the statute in the same way. *Arrangements, Arrow Carrier Corp. and Duplan Silk Corp.*, 4 M. C. C. 657, 677.

[9] These are the rates in the first category described on p. 4, *supra*.

to violate Section 216 (d) in that they were unjustly discriminatory.

It will be remembered that the proposed l. t. l. rates apply on all freight which is immediately preceded or followed by movement in a truckload or carload consignment. These rates are lower than the existing rates for local movement of the same commodities between the same points,[10] they were concededly filed in order to protect the interests of the forwarders, and, although ostensibly open to the public, they can be taken advantage of only by the forwarders and a few large shippers.[11] The proposed rates thus suffer from the vice found to exist in the practice of granting terminal and in-transit warehousing by railroads to shippers. This Court said of the terminal warehouse rates: "Since the

[10] The Commission found that the proposed rates are "materially lower" than appellees' local rates on like traffic between the same points (R. 18).

[11] A small shipper desiring to send a case of goods by truck from Racine to Chicago and thence by rail to Cleveland could not take advantage of these rates since his shipment would be l. c. l. throughout the entire movement. If he placed the shipment in the hands of a forwarder, then the latter could secure the proposed rate from Racine to Chicago, because, at the latter point he could consolidate this shipment with others to form a carload. A large shipper with scattered plants around Chicago could conceivably also secure the advantage of the rate. The various l. c. l. shipments from the different plants could be consolidated by him into a single carload if all were bound to the same destination. Similarly the large shipper might bring into Chicago a single carload from one of his suppliers and then distribute l. c. l. loads to his various plants under the preferential rate.

carrier warehouse rates, as found by the Court and Commission, are not open to all shippers alike, there is violation of §§ 2 and 3 (1) prohibiting discrimination and unreasonable prejudice." *B. & O. R. R.* v. *United States*, 305 U. S. 507, 524. And of the in-transit tariffs: "Some shippers are not in a position to avail themselves of the below-cost in-transit service. They must pay the full transportation rate, without any offset from the warehousing. This discrimination between shippers is unlawful * * *." *Ibid.*, at 526.

Appellees attempted to justify the obviously discriminatory character of the proposed rates by the contention that the circumstances and conditions surrounding the traffic which would move under the proposed rates are substantially dissimilar from traffic moving under established local rates. The substantial dissimilarity is said to arise from the fact that the l. t. l. shipments are preceded or followed by movement in a consolidated carload. More particularly appellees introduced evidence which they contend showed that the cost of the service to the carrier was less on forwarder traffic because of the necessity of making fewer stops and because the solicitation is done at the expense of the forwarder; that the traffic is different from local traffic in that it is essentially a movement of through l. c. l. shipments; and that the movements are affected by the commercial and competitive conditions applicable for long-haul shipments whereas traffic moved under local rates is affected

only by the local commercial condition and economic conditions.

The Commission did not find these contentions, and the evidence adduced to support them, persuasive. It found that the conditions and circumstances were not so dissimilar as to permit an exception to the rule of equality. Appellees contend that this finding is not based on substantial evidence because all the evidence which was introduced was in favor of the proposed rates. But, the problem here is not one of conflicting evidence but of the inference to be drawn from undisputed evidence. *United States* v. *Louisville & Nashville R. Co.*, 235 U. S. 314, 320–321. The Commission had before it the proposed rates and the existing local rates and the conditions and circumstances surrounding the movement of the various kinds of traffic. From this evidence the Commission drew inferences opposed to the lawfulness of the rates. Appellees contend that, in effect, the Commission placed on them the burden of proof of justifying the rates and that the Commission's determination is, for that reason, unauthorized. But this contention is a fundamental misconception of the Commission's function in a proceeding of this kind.

Through the enactment of the Motor Carrier Act, Congress attempted to "develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States" (Sec. 202 (a)). It directed that "it shall be the

duty of the Commission to regulate common carriers by motor vehicle as provided" in the Act (Sec. 204 (a) (1)). The Commission's duty transcends the narrow interests of the shippers and carriers involved in the particular case. Its duty is an administrative one which must be discharged within broad limits of discretion and judgment. "Whether a discrimination in rates or services of a carrier is undue or unreasonable has always been regarded as peculiarly a question committed to the judgment of the administrative body, based upon an appreciation of all the facts and circumstances affecting the traffic." *Swayne & Hoyt* v. *United States*, 300 U. S. 297, 304. The adequacy of the transportation system as a whole must be constantly before it, particularly in dealing with questions of unjust discrimination. In dealing with the question in this case the Commission had to place it in its historic background, which includes on the one hand the history of the "rule of equality" and on the other the forwarder problem.

From its very inception the Commission has construed the rule of equality with the greatest strictness: "No view has been open to less qualification in the thought of the Commission than the principle declared by Congress that identical movements of traffic of substantially similar character should be charged precisely equal rates." Sharfman, *The Interstate Commerce Commission*, III–B, p. 755. At no time in its history has the Commission been readily disposed to grant relaxation of the rule.

and most of the relaxations which now exist have become established only after repeated and prolonged inquiry. This has been true in the case of passenger traffic (see Sharfman, *The Interstate Commerce Commission*, III–B, pp. 371–378) as well as in the case of carriage of goods. *Ibid*, pp. 378–413. In dealing with the problems which arise when relaxations of the rule of equality have been urged upon it, the Commission has not been confined within mathematically determined formulae but has been permitted to exercise that "flexible limit of judgment which belongs to the power to fix rates." Chief Justice White in *Atlantic Coast Line* v. *N. C. Corp. Comm.*, 206 U. S. 1, 26.

Nowhere, perhaps, has the necessity for the exercise of broad administrative discretion in dealing with relaxations from the rule of equality been better illustrated than in this case. The whole forwarder problem is now in flux. The forwarders have been held not to be common carriers, *Acme Fast Freight, Inc.*, 8 M. C. C. 211; many of the practices surrounding them have been condemned, *Freight Forwarding Investigation*, 229 I. C. C. 201; legislation intended to regulate them is now pending in Congress. In this case the Commission was presented with a series of rates intended to perpetuate advantages which the forwarders had previously enjoyed. Some of these advantages, the proposed quantity and truckload rates (*supra*, p. 6) were clearly illegal. Other advantages, the proposed l. t. l. rates, were designed to replace

previous divisions of joint rates which were, to say the least, of doubtful legality. *Acme Fast Freight, Inc., supra.* The record contained evidence indicating that if these rates were sustained, similar rates would be filed all over the country (R. 369). The proposed rates are novel in form; their implications to shippers, motor carriers, and rail carriers are unknown; they may create vested interests which will complicate further attempts to deal with the forwarder problem. All these are factors which the Commission as "a body of experts appointed by law and informed by experience" is competent to take into consideration in refusing to relax a rule whose strict maintenance has been one of the fundamental principles of its half century of life.

Appellees place great reliance upon *Texas & Pac. R. Co.* v. *I. C. C.*, 162 U. S. 197, in which this Court set aside an order directing the railroads to desist from charging less on import traffic from ports to inland destinations than on domestic traffic from and to the same points. That decision was rendered by a Court which frankly looked upon the Interstate Commerce Act as "experimental" legislation, 162 U. S. at 218, and the opinion is accompanied by a powerful dissent by Mr. Justice Harlan, (Chief Justice Fuller and Mr. Justice Brown joining in the dissent). The Act was new, and the rates which the Commission sought to strike down had been established long before its passage. The powers of the Commission were then

far less than they subsequently became, and the Court then took a most restricted view of the function of the Commission in passing upon the facts presented to it.[12] If this decision were to be applied as appellees contend, the door would be opened to the return of the manifold discriminations which the Commission has successfully outlawed by stern adherence to the rule of equality.[13]

This Court has pointed out that "the judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body," *Mississippi Valley Barge Line Co.* v. *United States*, 292 U. S. 282, 286, and that "so long as there is warrant in the record for the judg-

[12] Sharfman, *The Interstate Commerce Commission*, III-B, p. 382, points out that this decision has not been construed to prevent adherence "to a strict construction of the Act in domestic situations," the matter of import rates being relegated to a distinct category.

[13] Appellees also rely on a number of cases in which the Commission has approved rates which appellees believe to be analogous to the proposed rates, including ex-lake rates on coal and ore (*Maritime Assn. of Boston* v. *Ann Arbor Railroad Co.*, 95 I. C. C. 539; *Trunk-Line & Ex-Lake Iron Ore Rates*, 69 I. C. C. 589; *Lake Cargo Coal Rates*, 101 I. C. C. 513, 126 I. C. C. 309), rates on coal transshipped by barge (*Ex-Ohio-River Coal*, 185 I. C. C. 211; *American Rolling Mill Co.* v. *B. & O. Co.*, 173 I. C. C. 357), and certain rates on cotton (*Cotton in the Southwest*, 208 I. C. C. 677, 216 I. C. C. 17). The Commission was not persuaded by these purported analogies (R. 16) and they cannot be pressed upon this Court which has no concern with the fact that a determination by the Commission may be inconsistent with its own prior determinations. *Western Chem. Co.* v. *United States*, 271 U. S. 268, 271; *Virginian Ry.* v. *United States*, 272 U. S. 658, 663.

ment of the expert body it must stand." *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125. These principles apply with particular emphasis here where the Commission was called upon to relax a rule to which it has adhered with the utmost strictness and under circumstances which involved uncertain consequences to the transportation system of the entire country.

The necessary "rational basis" for the Commission's conclusions is apparent not only in these larger matters of concern to the transportation system as a whole but also in the subsidiary considerations involving defects in these tariffs considered in their narrower aspect. The Commission found that the rates, except insofar as they may be used by a very few large shippers, are not the rates which would be charged the owners of the property shipped, and that there is no evidence that the owners of property transported would obtain any saving in transportation charges; that insofar as the rates purport to be proportions of through rates for application in connection with contract rates they are inconsistent with appellees' status as common carriers; that the tariffs do not contain adequate policing rules. It may be that no one of these subsidiary findings would of itself be sufficient to support a determination of unlawfulness. Taking them all together and placing them in conjunction with the doubtful implications of the proposal to the transportation system as a whole, and the re-

quirement of a "rational basis" for the administrative action is more than satisfied.

B. THE COMMISSION PROPERLY FOUND THAT THE PROPOSED RATES VIOLATE THE ACT IN OTHER RESPECTS

The Commission found that the tariffs filed by appellees did not contain adequate rules for policing (R. 19). One of the dissenting Commissioners had previously expressed a similar view (R. 43). The tariffs allow 48 hours at the reforwarding points within which shipments to be reforwarded must be tendered to the carriers performing the outbound movement from such reforwarding points. The only policing regulations provided are instructions requiring the billing of the shipment to show reference to the bill of lading of the preceding carrier on outbound movements from the reforwarding points, and reference to the ultimate destination of the property on inbound shipments to the reforwarding points (R. 14).

The Commission has the duty of seeing to it that adequate policing rules are contained in the tariffs filed with it, in order to prevent the use of the rates by traffic which does not comply with the requirements of the tariff. There is no basis for any contention that the Commission exceeded its authority herein. While there is merit to the dissenting Commissioners' suggestion that the inadequacy of the policing rules could be corrected by permitting the carriers to amend the tariff, the Commission was justified in considering this defect as one

of the numerous factors which made for the invalidity of the tariffs as a whole.

The Commission also found that the proposed tariffs are "lacking in clarity and definiteness" and hence violate Sections 217 (a) and 217 (c) (R. 17). The former Section requires the filing of tariffs in such form and manner as the Commission shall prescribe and authorizes it to reject any tariffs not in consonance therewith. The regulations prescribed by the Commission (Tariff Circular MF No. 2) require that all rates must be "explicitly stated" (R. 430). Section 217 (c) requires that a notice of a change of rates must "plainly state the change proposed."

The tariffs denominate the proposed rates as "proportional rates." The Commission found that these rates were not in fact proportional rates since they were not "proportions of, parts of, or remainders of through less-than-truckload rates or of less-than-carload rates subject to the interstate commerce act at which less-than-truckload shipment could be consigned under a through bill of lading from point of origin to final destination" (R. 15). Hence the Commission found that the rates "were not what they purport to be" and "lacking in clarity and definiteness." Appellees contend that the question is purely one of nomenclature and that they might just as easily have called them by some other name. The fact remains,

however, that the Commission has found the proposed nomenclature misleading and there is no warrant for setting aside its finding on so peculiarly technical a matter, *Norfolk Southern Railroad Co.* v. *Chatman*, 244 U. S. 276, 284. If the appellees believe that they can escape the strictures of statute and regulations by a different name, their obvious remedy is to refile the rates.

III

In Any Event, the Decree of the Court Below Is Too Broad

It will be remembered that in addition to the proposed l. t. l. rates about which the major controversy revolves, the suspended tariffs also contain proposed quantity rates and truckload rates (see *supra*, p. 6). The trial examiner found with respect to the proposed quantity rates that the manner of statement in the tariff was ambiguous and violated the tariff regulations. He found, with respect to the proposed truckload rates, that no evidence had been offered regarding them, that it was doubtful whether they would be compensatory and that they had not been justified by appellees (R. 55). In its final report the Commission reaffirmed these findings with the statement that "the finding in the prior report that the so-called quantity and truckload proportional rates would be unlawful was not questioned by the

parties" (R. 20). These rates do not appear to have been mentioned in the brief of appellees below, and the district court made no finding with respect to them. Nevertheless, the decree of the district court sets aside the order of the Commission without qualification.

It is obvious that this decree is too broad. Even if the finding of the lower court on the lawfulness of the l. t. l. rates should be affirmed by this Court, the decree should be modified to permit the Commission's order to stand with respect to the quantity and truckload rates.

CONCLUSION

It is respectfully submitted that the decree of the district court should be reversed and the cause remanded with directions to dismiss the bill of complaint.

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APRIL 1940.

APPENDIX

The pertinent provisions of the Interstate Commerce Act are as follows:

PART I

SEC. 2.[1] That if any common carrier subject to the provisions of this part shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this part, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

SEC. 3. (1)[2] It shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, or any particular description of traffic, in any respect whatsoever or to subject any particular person,

[1] 24 Stat. 379, as amended, 49 U. S. C. § 2.

[2] 24 Stat. 380, as amended, 49 U. S. C. § 3.

company, firm, corporation, association, locality, port, port district, gateway, transit point, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

* * * * * *

PART II[1]

SEC. 202. (a) It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and cooperate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part.

* * * * * *

SEC. 216. (d) It shall be unlawful for any common carrier by motor vehicle engaged in

---

[1] 49 Stat. 543 (known as the Motor Carrier Act, 1935), 49 U. S. C., Supp. I, ch. 9.

interstate or foreign commerce to make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, gateway, locality, or description of traffic in any respect whatsoever, or to subject any particular person, port, gateway, locality, or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discriminations, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

* * * * *

SEC. 217. (a) Every common carrier by motor vehicle shall file with the Commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property in interstate or foreign commerce between points on its own route and between points on its own route and points on the route of any other such carrier, or on the route of any common carrier by railroad and/or express and/or water, when a through route and joint rate shall have been established. Such rates, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in such form and manner, and shall contain such information, as the Commission by regulations shall prescribe; and the Commission is authorized to reject any tariff filed with it which is not in consonance with this section and with such regulations.

Any tariff so rejected by the Commission shall be void and its use shall be unlawful.

* * * * *

SEC. 217. (c) No change shall be made in any rate, fare, charge, or classification, or any rule, regulation, or practice affecting such rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a common carrier by motor vehicle, except after 30 days' notice of the proposed change filed and posted in accordance with paragraph (a) of this section. Such notice shall plainly state the change proposed to be made and the time when such change will take effect. The Commission may, in its discretion and for good cause shown, allow such change upon notice less than that herein specified or modify the requirements of this section with respect to posting and filing of tariffs either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

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No. 724

In the Supreme Court of the United States

OCTOBER TERM, 1939

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

CHICAGO HEIGHTS TRUCKING CO. ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

SUPPLEMENTAL BRIEF FOR THE APPELLANTS

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I

Appellees note in their brief the omission from appellants' brief of a specification of errors relied upon. This specification was omitted through inadvertence. The assignments of error appear at R. 495–499. The record also contains a "Statement of points to be relied upon" in which the appellants say "that they will rely upon the points made in their assignments of error in brief and oral argument before this Court on their appeal in the above-entitled cause" (R. 512). Appellants now

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repeat that they urge before this Court all of the errors assigned at R. 495–499.

Appellees claim (Br. pp. 1, 13) that the argument advanced in appellants' brief under Point III, that the decree of the court below is too broad because it extends to those provisions of the Commission's report and order dealing with the proposed truckload and quantity rates, is not covered by the assignments of error. It is submitted that this point is covered by assignment 32 (R. 499), which states that the court below erred, "in concluding, as a matter of law, that the Commission's order is arbitrary, unlawful and void, *and in granting the relief for which plaintiffs prayed.*" [Italics inserted.] The prayer in the complaint (R. 12) asks that the order of the Commission be set aside and the Commission be restrained from enforcing it. No discrimination is attempted in the prayer between those rates in the tariffs which appellees claimed to be lawful and those which they conceded to be unlawful. The district court granted the prayer again without discriminating among the rates.

II

Appellees dispute (Br. 22) the Commission's finding that the proposed rates are "materially lower" than appellees local rates on like traffic between the same points (R. 18), and contend that the proposed rates are not lower. They object to the citation in appellants' brief, by way of illus-

tration, of an instance where the proposed rates are lower than the local first-class rate. It was admitted, on the record, that "in some instances" the proposed rates are lower than the local rates (R. 107). The dissenting Commissioner stated that the proposed rates are "lower than some, but by no means all, of the corresponding local rates" (R. 22, note 2). It also appears from the record that the proposed rates are at a level somewhere between the existing third- and fourth-class rates for local traffic (R. 32, 33, 371, 372). Therefore, in any event, the proposed rates are lower than the applicable local rates on traffic included in the third and higher classes.

Appellees contend, nevertheless, that no comparison should be made between the proposed rates and the rates for the first three classes, but that the comparison should be between the *average* return of appellees from local traffic and the *average* return from the forwarder traffic (which has in the past moved under rates identical with the proposed rates). This comparison, it is said, shows that the proposed rates will, on the average, yield a higher return than the local rates, although it is admitted that two cases show the contrary (Br. p. 23, note 13). However, while there is some confusion in the record on this point,[1] it appears that

[1] Indicative of the confusion is the colloquy between counsel for appellees and Commissioner Rogers (R. 409). Asked to give the Commission "some idea generally" of the difference between the local and the proposed rates, counsel stated that he could not give an answer.

the probable reason why the returns from the forwarder traffic are, in many cases, higher than the returns for the average of local traffic is because the forwarders handle principally traffic in the first to fourth classes, while the local traffic includes traffic of all classes, both low grade and high grade.[2] The Commission was thus justified in refusing to draw the inference that the proposed rates were not lower than the local rates, and in drawing the opposite inference.

The Commission's finding of discrimination rests not only on this difference in the rates but also on the fact of discrimination between large and small shippers. The Commission found that the proposed rates could only be taken advantage of by the forwarders and a very few large shippers (R. 18). Appellees apparently do not contest this finding. As pointed out in appellants' main brief, the proposed rates have, in this respect, the same vice found by this Court to exist in the granting of warehouse privileges to shippers by railroads. *B. & O. R. Co.* v. *United States*, 305 U. S. 507.

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[2] See the colloquy between Mr. Turney, counsel for appellees and Commissioner Caskie at R. 371–372. In the argument before the Commission, counsel for carriers intervening in opposition to the proposed rates, stated, "the forwarding company business is primarily fourth class and higher." (R. 378.) This statement does not appear to have been controverted or challenged. *Cf.* the Commission's statement in *Freight Forwarding Investigation*, 229 I. C. C. 201, 209: "Fourth-class traffic is generally not attractive to forwarders because of the comparatively narrow spread between the railroad carload and less-than-carload rates."

Appellees argue at length (Br. pp. 23–31) that the finding of "unjust discrimination" was unwarranted on the ground that the service under the proposed rates is unlike that under the local rates, that the traffic is different, and that the circumstances and conditions are dissimilar. The validity of these contentions depends upon the inferences to be drawn from the evidence introduced by appellees. The drawing of these inferences was for the Commission and it drew them contrary to appellees' contentions. Appellees' argument is devoted to showing that the Commission was wrong, but that is not a question upon which this Court will rule. Appellees must show that the Commission was arbitrary or capricious, and this they have not shown and cannot show.

Respectfully submitted.

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Appellants,

v.

CHICAGO HEIGHTS TRUCKING CO. et al.,

Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois.

BRIEF FOR THE APPELLEES.

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Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois.

BRIEF FOR THE APPELLEES.

STATEMENT OF THE CASE.

Appellants' Statement.

Contrary to Rule 27 (2) (e) of the rules of this Court, Appellants' brief fails to specify the assigned errors upon which they rely in this Court. Indeed, as will be pointed out hereinafter, contentions now are advanced which were not assigned as error. The evidence introduced before the Com-

mission was undisputed. In the Court below, appellees contended that the findings of the Commission upon which the order was based not only were unsupported by any evidence, but were contrary to the evidence, and this, the lower Court expressly found to be the case. The duty, therefore, devolved upon appellants to point out in their brief the evidence which did support the findings of the Commission upon which they rely. This appellants have not even attempted to do.[1] The lower Court made nineteen findings of fact which cover every issue involved. Appellants assigned as error only five of these findings,[2] and if we interpret their brief correctly, now urge only one of these assignments, i. e., assignment of error No. 25 that the Court below erred in findings Nos. 15 and 16 that the suspended tariffs clearly and accurately state the charges, etc. Under these circumstances, we take it that the findings of fact made by the Court below, except in the particulars noted, will be accepted as the facts which were before the Commission. We therefore set out as our statement of the evidence before the Commission, the findings of the lower Court, to which we have appended reference to all evidence bearing thereon.

Findings of Fact by Court Below. (R. 490)

1. Plaintiffs are common carriers of property by motor vehicle and subject to the Motor Carrier Act, 1935, and operate over public highways in the States of Illinois, Wisconsin, and Indiana. (R. 2, 58, 61, Exhibit 2, R. 237)

2. In October and December, 1937, plaintiffs caused three tariffs to be filed with the Interstate Commerce Commis-

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1 Reference to the Record of testimony is made in appellants' brief in only three instances and in each case to a single (and the same) exhibit.

2 Finding 3, R. 490, Assignment (1), R. 496;
Finding 4, R. 490, Assignment (2), R. 496;
Finding 14, R. 492, Assignment (24), R. 498;
Findings 15 and 16, R. 492, Assignment (25), R. 498.

sion, naming rates on less-than-carload interstate shipments of "all freight" (with certain exceptions not necessary to name) immediately preceding or following transportation thereof as part of a consolidated truckload or carload consignment between (a) Chicago, Illinois, upon the one hand, and points in Wisconsin and Illinois, upon the other, and (b) Indianapolis, South Bend, Fort Wayne, Muncie, and Evansville, Indiana, upon the one hand, and points in Indiana within the respective trade areas of each of said cities, upon the other. (R. 3, 58, 61, Exhibit 1, R. 204)

3. The aforesaid tariffs were suspended by the Commission, on its own motion, without complaint, by its orders of November 29, 1937, and January 14, 1938, and following the hearing provided in the Motor Carrier Act and a report by the examiner recommending that the tariffs be found lawful, a division of the Commission found the rates named in the tariffs to be unlawful and ordered the tariffs canceled. Upon rehearing, the entire Commission affirmed this order, but upon findings substantially different from those made by the division. (Recommended Report, R. 46; Report of Division 5, R. 29; Report of Commission, R. 13)

4. While the tariffs are not restricted and apply to the traffic of all shippers, (R. 85) the principal traffic which will be carried under the suspended rates is what is called by the Commission "freight forwarder traffic". This traffic consists of individual less-than-carload shipments of freight originating or terminating at points far distant from the lines and routes of plaintiffs, and carried in a coordinated railroad and motor carrier service under the control and direction of common carrier organizations known as "freight forwarders". (R. 80, 81. See also R. 97, 125, 128, 133, 147, 151)

5. The method by which said freight is carried is as follows: Plaintiffs jointly with other carriers, forwarder, rail and motor, maintain a nation-wide sales and service organization whereby individual less-than-carload shipments are collected at the door of the shipper from all producing points in each marketing area, concentrated by motor truck at the market center of the area, consolidated with other similar shipments, and moved in consolidated car lot or truck lot consignments to a breakbulk station located at the center of the consuming trade area from which the individual less-than-carload shipments are distributed to the door of the consignee. Plaintiffs perform the concentration and distribution service, between concentration and breakbulk stations located in the cities named in paragraph 2, supra, and points within the trade area of each (R. 76, 77).

6. This coordinated transportation of plaintiffs has resulted in a more complete, dependable, and reliable service generally superior to either all-rail or all-truck competitive services, as a result of which it is widely patronized by shippers.[3]

7. The "forwarder traffic," which would be carried under these tariffs, at the present time and for a number of years prior, is and was carried under joint tariffs of plaintiffs, freight forwarding carriers, and other motor carriers, now on file with the Commission, naming through rates on the less-than-carload shipments from ultimate point of origin to ultimate destination, which tariffs were ordered stricken from the files of the Commission by an order is-

[3] More expeditious and flexible than any available transportation service.—Shipper testimony: R. 150, 130, 102; Carrier testimony: R. 141, 172, 197. Widely patronized by shippers because it is faster, more complete, dependable, reliable and generally superior to any other method of transportation.—Shipper testimony: R. 96, 97, 98, 99, 101, 104, 106, 108, 110, 111, 120, 124, 126, 127, 128, 129, 130, 132, 133, 134, 135, 146, 147, 148, 149, 151.

sued at about the same time as the order which this proceeding seeks to annul and enjoin (R. 76).

8. Plaintiffs' compensation, in the form of divisions of the joint rates described in paragraph 7, presently and formerly received for their services in connection with the transportation of such traffic, is practically identical with the compensation which plaintiffs would receive for like services under the suspended tariffs (R. 91, 137, 140, 142, 113, 121, 182).

9. Plaintiffs contemporaneously maintain what are called "local rates" upon less-than-carload freight, originating or terminating at the points named in paragraph 2 hereof, which differ from the suspended rates in that such freight shipments are classified into a number of different classes, each taking a different rate, some of which rates are higher and some lower than the suspended rates, which latter rates apply on all freight, regardless of classification. The average revenue per 100 pounds derived by plaintiffs from such local rates, upon the whole, is less than the average revenue per 100 pounds which will be produced by the suspended rates for movement between the same points (R. 94, 115, 185).

10. The service which will be provided by plaintiffs under the suspended rates is identical with the service which they now perform in the carriage of through interline shipments under existing joint tariffs with other motor carriers with whom plaintiffs connect, and the suspended rates are substantially higher than the divisions which plaintiffs receive for their services for the carriage of such interline traffic (R. 93, 94, 114, 162, Ex. 13, R. 327).

11. The service which plaintiffs will be required to provide under the suspended tariffs is different and less than it is required to provide for traffic moving at its tariffs of

local rates, in that (a) no solicitation or billing is necessary (R. 162); (b) but one instead of two terminal services (collection, delivery, and station platform handling) is required (R. 91, 143, 186, 190, 192); and (c) relatively fewer deliveries are required (R. 91, 93, Exhibit 7, R. 281, 288, 305); and (d) the expense of providing such service under the suspended tariffs will be less than the expense of the service required in the transportation of such local traffic (R. 94, 159, 143, 186, 190, 198).

12. The traffic which will be handled under the suspended rates consists of through interline shipments and either originates or terminates on plaintiffs' lines, whereas the traffic handled at plaintiffs' local rates consists of local shipments which both originate and terminate on plaintiffs' lines (R. 76, 77, 91).

13. Movement of the traffic which will be carried at the suspended rates is affected and influenced by commercial, economic, and competitive conditions, applicable to long-distance commerce between points on plaintiffs' routes and points in all other states, whereas the movement of plaintiff's local traffic is influenced by the local commercial conditions applicable in the restricted trade areas about each of the cities named in paragraph 2. (R. 89, 91, 104, 107, 121, 135, 147.)

14. There is no evidence or claim that any particular person, port, gateway, locality, or description of traffic will be injured or damaged, or occasioned any loss by operation of the suspended tariffs.

15. The suspended tariffs explicitly state the applicable rates and accurately describe the service to be rendered (and the rules applicable thereto) for such rates.[4]

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[4] Typical Tariff: Title page—R. 213; Table of contents—R. 214; Participating carriers—R. 214; Application of rates—R. 217; Rules and Regulations—R. 220; Rate table—R. 223.

16. The suspended tariffs plainly state the charges which are proposed to be made thereby and the time when such charges will take effect.[5]

17. Enforcement of the order of the Commission will deprive plaintiffs of a large and profitable part of their revenues [(a) Would deprive appellees of traffic: R. 161, 164, 175, 176, 177, 178, 181, 183; (b) Resultant injury: R. 164, 137, 139, 141, 143, 186, 187, 196, 197, 166].

Commission's First Report.

The original report of the Commission by Division 5 held the rates were unreasonable, finding, (1) it was "questionable whether the proposed rates may properly be considered as true proportional rates * * * and whether the traffic is through traffic" (R. 35); (2) that a "serious question was raised whether the proposed rates will be reasonably compensatory" (R. 36); (3) that "the rates here proposed are in their true nature, special rates for a particular type of shipper" (R. 38); (4) "the record is not convincing" that appellees would lose the traffic (R. 39); and finally (5) that the suspended rates would "tend to perpetuate such all-commodity rates'" (R. 36).[3]

Appellees filed a petition for reconsideration upon the ground that each of the above findings were unsupported by and contrary to the undisputed evidence before the Commission (R. 448).

Commission's Final Report.

The final report of the Commission did not affirm the finding of the original report that the suspended rates were unreasonable (except with respect to the "so-called quantity and truckload proportional rates" [R. 20], an issue which was

[5] Typical Tariff: Rate table—R. 223; Effective date—R. 213.

[3] For a more complete analysis of the findings of the original report, see Chairman Eastman's dissenting opinion beginning at bottom of page 2 of Record.

not even discussed in the report), but condemned the rates solely upon the ground of discrimination under section 216 (d), and lack of clarity and adequate policing rules under section 217 (a) and (c), finding (1) that the suspended rates were "materially lower than respondents' local rates on like traffic between the same points (R. 18); (2) that the difference in nature and extent of the services required under the suspended rates was due to the voluntary action of appellees in adopting a different method of handling such freight, and that, therefore, the rates would provide "transportation at rates lower than the rates which will be charged certain other shippers under substantially similar circumstances and conditions, in violation of section 216 (d)" (R 19). With respect to the violation of section 217 (a) and (c) of the Act, it found (3) that the rates "are not what they purport to be" (i. e., true proportional rates) and are therefore lacking in the clarity and definiteness required by that section (R. 17); and (4) that "the tariffs naming these rates contain no adequate policing rules for insuring that property shipped under these rates has in fact been transported or is to be transported as part of a carload or truckload shipment. * * * There is no evidence that respondents would have any way of enforcing provisions against substitution of property originating at or destined to the reforwarding points, even if such provisions were incorporated in the tariffs" (R. 19, 20).

"Problem of the Forwarder."

As will appear from a consideration of the issues and record in this case, much that is said in appellants' brief (page 7), under the caption "The problem of the forwarder," is irrelevant. In view of what is said, we feel it is appropriate for a little clearer statement of the problem to be made. This statement is based upon the findings of the

Commission in the several cases which are referred to in appellants' brief and the testimony in this record.[4a]

Freight forwarding is a method of transporting packages of less-than-carload freight by coordinating the operations of different types of carriers, rail, water and truck, and integrating their services by a common agency, the forwarder. Prior to the development of motor truck transportation, forwarders were engaged merely in the pooling of less-than-carload shipments into carload shipments between two railroad terminals. It was not possible for them to serve any except the great cities, in this operation. With the advent of the motor carriers, it was possible to coordinate their services with those of the rails so that now the entire United States is served by three of the largest forwarding companies.[4b] The operations of a typical forwarder were thus described by the Commission in *Acme Fast Freight, Inc., Common-Carrier Application*, 8 M. C. C. 211 (p. 223):

> "* * * What applicant undertakes to do is to see to it that goods are carried from a point of origin to a point of destination, and to utilize for this purpose the services of carriers by rail, by water, or by motor vehicle, separately or in combination, in whatever way will accomplish the purpose most economically and expeditiously. In this undertaking it is a common carrier under the common law, as we have found. Applicant issues to the shipper its own bill of lading, takes custody of and assumes liability for the shipment while in course of transportation, and charges rates covering the entire service. * * *"

[4a] Freight Forwarding Investigation, 229 I. C. C. 201; Acme Fast Freight, Inc., 8 M. C. C. 211; Acme Fast Freight, Inc., v. United States, 30 F. Supp. 968.

[4b] The claim of appellants that forwarding companies are "middlemen of the transportation business" (Brief p. 7) is without basis in the record and factually inaccurate to the point of being misleading. This record clearly shows, and the Commission concedes, that the forwarder is not a "dealer" but provides an essential transportation service.

The aggregate annual revenues of these companies is in excess of 100 million dollars, is nearly as much as the aggregate l. c. l. revenue of the Railway Express Company, and approximately 40 percent as great as the combined less than carload (l. c. l.) revenue of all railroads. These forwarding companies operate upon a very narrow margin, it appearing that after payment of the transportation costs of the carriers and their own very substantial costs in assembling, handling, collecting and distributing the freight, their profit is less than 1 cent per 100 pounds.

In the *Freight Forwarding Investigation*, 229 I. C. C. 201, the Commission held, page 299:

> "There can be no doubt that the forwarder method of handling traffic has made for itself an important place in the transportation field. It should exist, however, independent of the abuses portrayed upon this record, most of which impose a burden of unnecessary expense upon the rail lines. The forwarder method of shipment generally has served to promote transportation economy by concentrating traffic. If this achievement had not been attended by the practices of the rail lines in extending unduly advantageous treatment to this class of traffic, there might have been no occasion for this investigation."

One reading appellants' brief might receive the impression that the abuses which the Commission found in the Freight Forwarding Investigation have something to do with the rates involved in this case. Nothing could be further from the facts.

We set out in a footnote the findings made by the Commission in that case.[5]

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[5] 1. Rents paid by forwarders to railroads at a few stations found inadequate. 229 I. C. C. 217;

2. Car service rule of certain carriers found unreasonable. 229 I. C. C. 230; (The case subsequently was reopened and a new hearing has been held with respect to this finding.)

History of Rates.

At concentration points a forwarder consolidates a number of individual l. c. l. shipments into a single carload which it consigns *as a shipper*. With respect to this consignment, or the railroad which transports the car, the shippers of the individual l. c. l. shipments included therein have no relation whatever. When forwarders and truck lines instituted the present coordinated service to the small cities lying beyond the concentration or breakbulk depots, an entirely different situation arose. In every such case there is a direct shipper-carrier relation between the shipper of the l. c. l. shipment and the truck line which originates or terminates that shipment, as well as between the shipper and the forwarder who provides the remainder of the transportation. In respect to these l. c. l. shipments, the relation between the truck lines and the forwarders has not heretofore been that of shipper and carrier, but that of joint carriers providing a single coordinated service. The Motor Carrier Act specifically includes forwarding companies by name as carriers, at least some of whose operations are subject to its provisions. Assuming that all their operations were subject to this Act, the forwarders complied with its provisions including provisions requiring the filing of tariffs.

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3. Tariff rates for loading and unloading of forwarder freight found less than actual cost and unlawful. 229 I. C. C. 236;
4. New rule provided for the billing of all-commodity freight. 229 I. C. C. 242;
5. Constructive stop-off rules of certain carriers found unreasonable. 229 I. C. C. 251; (Case subsequently reopened and new hearing held with respect to this finding; no decision as yet.)
6. Several instances of split receipt or delivery of carload shipments found unlawful. 229 I. C. C. 256;
7. Several instances of expedited handling of forwarder traffic found unlawful. 229 I. C. C. 263;
8. Failure of railroads to render freight bills promptly, although requested by forwarders, found unlawful. 229 I. C. C. 263;
9. Operations of certain railroad transport or express companies found unlawful. 229 I. C. C. 286;
10. Railroad ownership of forwarding companies found unlawful. 229 I. C. C. 297.

These tariffs were received by the Commission and for several years treated as were other tariffs. Included among these tariffs were those naming joint through rates between points on appellees' lines and far distant points on other lines, out of which joint rates, appellees received for their part of the service, compensation in the form of divisions. Subsequently the Commission found that although forwarders are common carriers, their operations are not subject to the Act, and that the legality of the joint rates was questionable.[6] To remove all question of legality, appellees filed these tariffs, under which the forwarder, for the first time, will become the technical shipper of the l. c. l. shipment. While this proceeding was pending, the Commission ordered the joint tariffs of appellees and the forwarders stricken from its files, effective June 11, 1940.[7] On this date, unless the tariffs here involved have become effective, a large part of appellees' business will be swept away and some of appellees ruined.

Appellants' repeated statement that the suspended rates "perpetuate advantages" to the forwarders is subject to an interpretation which is contrary to the record. Considered as shippers, the forwarders represent a class which differs greatly from any other shipper. As a class, they compete with no other shipper. The only "advantage" which would accrue from the suspended rates is that appellees and the forwarders will be able to continue to render this coordinated service. Indeed, forwarders now render this "off-line" service with little, if any, profit, and unless these tariffs become effective by June 11, they will be unable to render it at all (R. 179, 181). *The people who will be hurt are appellees, in that they will be deprived of the traffic, and the shippers at many small cities who will*

[6] Acme Fast Freight, Inc., 8 M. C. C. 211.

[7] Acme Fast Freight, Inc., 17 M. C. C. 549. Decree of the District Court of the Southern District of New York dismissing a bill to review this order, 30 Fed. Sup. 968, was affirmed by this Court, per curiam, on April 8, 1940.

be deprived of an essential service (R. 100, 120, 125, 132, 149, 153).

Truckload Rates.

For the first time in this proceeding *(it was not assigned as error)* appellants raise the question that the decree of the lower Court was too broad in that it sustained the provisions in relation to truck load rates, in one of the suspended tariffs, applying only between Chicago, Illinois, and Milwaukee, Wisconsin. This provision of the tariff is shown at the top of page 213 of the Record. No evidence was introduced respecting the rates, rules and regulations named in this item and the Examiner found that it was unlawful (R. 56), and appellees filed no exceptions to this finding of the Examiner (R. 43). This finding was sustained by the original report of Division 5 and no exception was taken thereto by appellees in their petition for reconsideration (R. 22, 448). Subsequently, the finding was reaffirmed in the final report of the Commission (R. 20), with respect to which no error was assigned by appellees in their bill (R. 9).

DEFINITION OF ISSUES.

1. Do the suspended rates subject any person or traffic to unjust discrimination? (Conclusion VI of Court below, R. 493.)

(a). Was there any evidence that disadvantage or injury would be suffered by anyone because of the suspended rates? (Conclusion I, Finding 14.)

(b) Is compensation under suspended rates lower than that under local rates? (Conclusion II, Findings 8 and 9.)

(c) Is the service to which the suspended rates are applicable like the service to which local rates are applicable? (Conclusion III, Findings 4, 10 and 11.)

(d) Is the traffic to which the suspended rates are applicable like the traffic to which local rates are applicable? (Conclusion IV, Findings 4 and 12.)

(e) Will the traffic to which the suspended rates are applicable be transported under similar circumstances and conditions as those under which local traffic is transported? (Conclusion V, Findings 4, 6 and 13.)

2. Are the tariffs technically deficient? (Conclusion VII.)

(a) Are the policing rules of the tariffs inadequate? (Finding 15.)

(b) Is the application of the rates clearly and explicitly stated? (Findings 15, 16.)

3. Will the enforcement of the order irreparably injure appellees by depriving them of their business? (Conclusion X, Finding 17.)

SUMMARY OF THE ARGUMENT.

Rates Not Discriminatory.

Section 216 (d) of the Motor Carrier Act makes it unlawful for a common carrier by motor vehicle (1) to *give* "any undue or unreasonable preference or advantage to any particular person, * * * or description of traffic," or (2) "to *subject* any particular person, etc., to any *unjust discrimination* or any undue or unreasonable prejudice or disadvantage." (Emphasis supplied.) The Commission does not find that any particular person or any description of traffic *was subjected* to any unjust discrimination or any undue or unreasonable prejudice or disadvantage, but merely that the rates under consideration would cause *unjust discrimination* in favor of certain shippers. In reaching this conclusion, it is necessary to hold that the phrase "unjust discrimination," which occurs only in the second clause of section 216 (d), is to be incorporated also in the first clause of that section. Since it is tacitly admitted that no particular person or description of traffic is disadvantaged or injured by the suspended rates, it follows that unless this strained interpretation is made, the rates are not unlawful as a matter of law. But even if proof of disadvantage or injury to some particular person or description of traffic is not necessary to constitute "unjust discrimination," as that phrase is used in section 216 (d), and if the Commission is right in its construction of the meaning of that phrase in that section, its finding still is arbitrary and unreasonable because none of the requisite elements to constitute "unjust discrimination" is present in this case. As correctly held by the Court below (1) *the compensation* to be charged under the suspended tariffs *is not less* than that applicable on other traffic between the same points, (2) the *transportation service* to be accorded under these tariffs is *greatly different and less* than that required for other traffic, particularly local traffic, in that one complete terminal service, including pick-up or de-

livery, billing, sorting and consolidation, is eliminated, and the traffic handled in semi-truckload quantities, while the other traffic is handled in less than truckload quantities, (3) *the traffic* which will be moved by these rates *is unlike other traffic* between the same points, since it is through traffic moving from or to points far beyond appellees' lines, and therein is wholly unlike local traffic with which it is compared by the Commission, and finally (4) the *transportation service* to be afforded is under wholly dissimilar circumstances and conditions. As tacitly admitted in appellants' brief, the facts in this case bring it squarely within the decision in the *Texas & Pacific R. Co. v. I. C. C.*, 162 U. S. 197, and require that the decree on this phase of the case be affirmed, unless the last-named decision be overruled.

No Technical Defects.

With respect to the second issue, the appellees submit that the finding of the Commission, that the tariffs did not contain adequate policing rules, is based upon assumed facts unsupported by anything in the record, and contrary to the actual facts; and that the criticism that the title page incorrectly denominates the suspended rates as "proportional rates" not only is contrary to a long line of decisions by the Commission itself as well as to a large number of identical tariffs now on file with it, but also to decisions of this Court. In any event these matters at most do not concern the merits or substance, but merely form and are capable of ready correction.

Injury.

Appellees further submit that the order of the Commission in this case, being wholly unsupported by any evidence and in practically all instances contrary to the undisputed evidence, is void, and that if such order is allowed to become effective, appellees will be deprived of their business and many of them forced into bankruptcy.

ARGUMENT.

1. The suspended rates do not subject any person or traffic to any unjust discrimination.

The Act.

Section 216 (d) of the Motor Carrier Act provides that it shall be unlawful for a common carrier by motor vehicle: (1) "to make, *give* or cause any undue or unreasonable preference or advantage to any particular person, port, gateway, locality, or description of traffic in any respect whatsoever," or (2) "to *subject* any *particular* person, port, gateway, locality, or description of traffic to any *unjust discrimination* or any undue or unreasonable prejudice or disadvantage in any respect whatsoever." Clause (1) quoted, relating to preference *in favor* of a person, etc., is practically identical with the first clause of section 3 (1) of Part I of the Interstate Commerce Act, and clause (2), relating to *prejudice against any person*, etc., also is identical with a similar clause of section 3 (1) of the Act, except that the phrase "any unjust discrimination" is added. (Italics supplied.)

Prior to the time the language of section 3 (1) of Part I was incorporated into the Motor Carrier Act, this identical language had been construed by the Commission and by this Court uniformly that in order for a particular rate or practice to be unlawful, under the language, the preference or prejudice must advantage one party and operate to the prejudice of or against another party,[8] and further that

[8] California Walnut Growers Asso. v. A. & RR. Co., 50 I. C. C. 558; Board of Trade of Chicago v. A. T. & S. F. R. Co., 29 I. C. C. 438; Beaumont Iron Works v. G. C. & S. F. Rwy. Co., 136 I. C. C. 228; Loose-Wiles Biscuit Co. v. St. L.-S. F. Rwy. Co., 136 I. C. C. 353; Evansville Chamber of Commerce v. A. T. & S. F. Rwy. Co., 196 I. C. C. 349; Red Ball Vegetable Co. v. Illinois Central R. Co., 197 I. C. C. 385; Corporation Commission of N. C. v. A. & R. Co., 200 I. C. C. 571; Utah State Auto Asso. v. A. T. & S. F. Ry. Co., 92 I. C. C. 376; Kloeber v. Northern Pac. Rwy. Co., 96 I. C. C. 437; Boston Port Differential Case, 95 I. C. C. 539; U. S. Phosphoric Products Corp. v. B. A. & P. Ry. Co., 153 I. C. C. 459; Duluth Chamber of Commerce v. C. St. P. M. & O. Ry. Co., 122 I. C. C. 739; I. C. C. v. C. G. W. Ry. Co., 209 U. S. 108.

an order of the Commission correcting such a prejudice must be in the alternative, so that the carrier may be in a position to elect how the prejudice and preference may be ended;[9] and finally that in order to show such prejudice or disadvantage, a competitive relationship between shippers occupying comparable positions must be shown.[10] Under well settled statutory rules, this interpretation of the language became a part of section 216 (d).

The Rates.

The suspended rates are designed principally to enable appellees to continue to handle long-haul through shipments of less-than-carload freight at rates identical with those charged for such shipments by long-haul truck lines and railroads (R. 89, 271). The transportation is performed in connection with other railroad and truck lines through coordination of their services by the forwarding companies. The rates are applicable only to through shipments which either originate or terminate beyond the lines of appellees and are received or delivered immediately following or preceding the movement by connecting carriers (R. 3, 58, 61, Exhibit 1, R. 204). The rates apply on all classes and commodities alike and therein differ from certain of appellees' local rates which apply on specially described "classes" of freight.

Commission's Findings.

The Commission found that the suspended rates "have no different standing under the act than the local rates" (R. 18), and were a device whereby either the forwarders or the shippers for whom the forwarders acted "will be afforded transportation at rates lower than the rates which

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[9] Texas & Pacific R. Co. v. United States, 289 U. S. 627.

[10] Dunn Mfg. Co. v. A. T. & S. F. R. Co., 157 I. C. C. 798; Federated Metals Corp. v. P. R. Co., 161 I. C. C 287; Scott-Omaha Tent etc. Co. v. A. & W. P. R Co., 185 I C. C. 618; B. & M. Motor Co. v. A. & S. Ry. Co., 201 I. C. C. 35.

will be charged certain other shippers under substantially similar circumstances and conditions" (R. 19). The Commission, as stated by Chairman Eastman's dissent: "did not make any finding of undue preference or prejudice; and this is also as it should be, for there is an entire absence of evidence to support any such finding" (R. 22).

Decision Below. The Court below held that the foregoing findings were contrary to the undisputed evidence and that both as a matter of admitted fact and of law the suspended rates were not "unjustly discriminatory," in view of several considerations, *any one of which is sufficient to sustain this holding*, namely: (1) That there was no evidence that the suspended rates would subject anyone to a disadvantage or injury; (2) that compensation under suspended rates was not lower than that charged on other traffic; (3) were applicable for an unlike service; (4) and unlike traffic; and (5) under substantially dissimilar circumstances and conditions (R. 493). We will discuss each of these in the above order.

Disadvantage. The evidence shows that not even a claim was made, much less was there any evidence that any person, shipper, traffic or locality would in any wise be subjected to any disadvantage or prejudice by reason of these suspended rates. Upon the other hand, shippers of local traffic (the only traffic mentioned in the Commission's report) were unanimous in their testimony that there was no discrimination (R. 104, 107, 134). The most casual consideration of the factual situation reveals this to be true. Take, for illustration, the case of a shipper at Racine having customers at Chicago and New York. The through less-than-carload rates, both rail and truck, from Racine to both destinations are those fixed by orders of the Commission. The shipper pays the same rate to either Chicago or New York, whether he uses appellee's

service, an all-truck service, or an all-rail service, the only difference being that where appellees' service is used, the rate is split into component parts. Appellants argue, however, that in the light of *Louisville & Nashville R. Co. v. U. S.*, 282 U. S. 740, no injury need be shown in proceedings under section 2 of Part I of the Act. While examination of the decision in that case will reveal that the court apparently held that from the peculiar circumstances of the case, injury was to be presumed, in the absence of evidence to the contrary,[11] it is unnecessary for the point to be labored here. Under section 2 of Part I, there is no express requirement that the difference be *against* any particular person, whereas in section 216 (d), above quoted, it is unlawful only "*to subject any particular person, etc., to any unjust discrimination.*" Since neither the evidence before the Commission nor its finding shows that "*any particular person or traffic*" was disadvantaged or injured, we submit that, as a matter of law, the rates are not unlawful under section 216 (d) of the Act.

Amending the Act.

Learned Counsel for appellants argue, however, that although the phrase "any unjust discrimination" in clause (2) of section 216 (d) above quoted, is not limited to cases where the discrimination disadvantages another, but that the same phrase is to

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11 So far as we can find the only decision in which the exact question has arisen under section 2 of the Act is in **United States v. Hanley**, 71 Fed. 672, where, at page 673, Judge Grosscup said:

"The language of the statute recognizes that a uniform rate between different shippers is not always possible or proper; that the time of service, the kind of traffic, and the circumstances and conditions under which it is transported may materially change the just obligations and duties of the carrier to his patrons. Equality and uniformity of rate, disassociated from considerations of time, kind, and circumstances of the transactions, is, therefore, not the object aimed at. The object of the statute is to prevent one shipper from getting the advantage over his competitor in the matter of rates only where they both make substantially a like offering to the carrier. There can, therefore, be no conviction under this section until it is alleged and proven that an advantage in rates has been given by the carrier to one person over that obtained by another, where both persons, fairly considered, are upon equality in the time, kind, and circumstance of their offering."

be incorporated by judicial interpretation also into the first clause of that section 216 (d), and hence that it is sufficient for the Commission merely to find, as it did here, that there is *discrimination in favor* of a particular person or traffic. This argument rests upon the theory that Congress intended to make the "rule of equality" of sections 2 and 3 of the Interstate Commerce Act as equally and as fully applicable to Motor Carriers as to carriers under Part I. We submit that under the most elementary rule of statutory construction, neither Commission nor the courts are warranted in amending legislation in this fashion. *Unless such an interpretation is placed upon section 216 (d), the finding of the Commission per se is insufficient to support the order.*

"Unjust Discrimination."

But even if the above position of the appellants is sound, nevertheless, an examination of the record in this case will show that the suspended rates are not unjustly discriminatory as that term is defined in the Act. Section 2 of Part I of the Act defines "unjust discrimination" as the act of charging "any person * * * a greater or less compensation for any service rendered, * * * in the transportation of passengers or property, * * * than it charges * * * any other person * * * for doing for him * * * a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions." Under the foregoing definition, the following are indispensable elements of "unjust discrimination": (1) Less compensation charged one person than another; (2) for a like and contemporaneous transportation; (3) of a like kind of traffic; (4) under substantially similar circumstances and conditions. The Court below held that the undisputed evidence upon which the Commission acted shows that none of these four indispensable elements of "unjust discrimination" are present in this case.

Compensation Not Less.

The Commission found "The proposed rates are materially lower than respondents' local rates on like traffic between the same points." (R. 18) No evidence is cited in the report of the Commission to sustain this finding and the Court below held that the evidence showed the exact contrary. At page 5 of appellants' brief, it is attempted to sustain it by citing an illustration of a *first-class* shipment by truck from Racine to Chicago, where the rate would be 48¢ per 100 pounds (R. 329, Exhibit 14) compared with the suspended rate *applicable on all classes of freight* of 30¢ between the same points (R. 212, Exhibit 1). If such a contention is correct, then every commodity rate or mixture which includes articles classified in a class taking a higher rate than the commodity rate is unlawful, and the rates which move the great bulk of American traffic would fall to the ground. It is an understatement to say that the argument is specious. The suspended rates here apply not on first class traffic, but upon *all freight*. Rates so applicable upon all freight have been specifically held by the Commission as not to discriminate against the individual class rates.[12]

Since the suspended rates apply not on first class traffic but on all classes of traffic, to ascertain whether the "compensation" charged is lower or higher than that charged on traffic moving at local class rates, it is necessary to consider all of that traffic. In the exhibit to which appellants refer, other class rates from Racine to Chicago are also shown which are materially lower than the suspended rate for the same service. The evidence, however, does not leave this question in doubt: Not only did witnesses testify from their expert knowledge that the suspended

12 All Freight etc., 223 I. C. C. 421; Commodities Between Chicago and Twin Cities, 226 I. C. C. 356; All Freight Between St. Louis and Kansas City, 234 I. C. C. 589; All Freight Between Harlem River and Boston, 234 I. C. C. 673.

rates on the whole provided greater compensation than the local rates, but a detailed analysis of their traffic for representative periods of time showed conclusively that this was the fact in practically every case.[13]

We therefore submit that the finding of the Court below that the evidence in this case showed that the suspended rates were not lower than the local rates against which they are alleged to discriminate is sustained by the undisputed evidence.

Unlike Service. An indispensable element to a finding of "unjust discrimination" is that the charge be made for a "like and contemporaneous service in transportation." Here again the facts are undisputed. The traffic under these rates moves in truckload quantities, whereas local traffic moves in less than truckload quantities In the handling of l. c. l. shipments, at the local class rates between points involved in these tariffs, each individual less than truckload shipment is handled as a separate and distinct transaction. Take an instance of a shipment from Chicago to Racine. An appellee will call for that shipment at the door of the consignor in Chicago in a local pick-up truck, bring it to his freight depot in Chicago, unload it from the pick-up truck, bill and consolidate it with other l. c. l. shipments moving to Racine and beyond into a line-haul truck, which will carry this shipment to its depot of appellee in Racine, where it will be unloaded, sorted and reloaded on delivery trucks and delivered to the door of the consignor in Racine. In handling traffic under the suspended rates, however, the appellee dispatches its road-haul truck to the door of the freight depot

[13] R. 94, 115, 185, Exhibit 7, R. 93, and R. 281, showing 18.6c per 100 lbs. for local traffic and 24.7c per 100 lbs. for this traffic; and R. 288, 26.91c for local traffic and 26.97c for this traffic; Exhibit 12, R. 113, 323, 24.44c for local traffic and 31.20c for this traffic; Exhibit 18, R. 185, 344, 28c for local traffic and 29c for this traffic. In but two cases was the contrary shown—Exhibit 19, R. 344, and Exhibit 21, R. 348.

of a railroad or other truck line in Chicago and there receives a consolidated consignment consisting of a number of shipments, all sorted and billed, which are loaded on its truck and carried directly to Racine, where they are distributed from the truck to the door of the consignee. This situation can be described no better than in the following quotation from the dissenting opinion of Chairman Eastman (R. 24):

> "Because of the requirement that a movement beyond in carload or truckload quantities must precede or follow the movement to which the suspended rates would apply, respondents would either deliver or receive the latter traffic at the point of interchange in truckload quantities, although it might be, and ordinarily would be, picked up or delivered at the other end of the haul in consecutive small lots. It would thus be what one witness called a 'semi-truckload' movement. In other words, it would be a movement at one end of the haul the characteristics of a concentrated truckload movement, including low unit terminal expense, but fanning out at the other end into a less-than-truckload movement with the high unit terminal expense characteristic of the scattered receipt or delivery of a number of separate small shipments. In contrast, local less-than-truckload movements characteristically have no such concentration at one end of the haul."

Carriage of the traffic subject to the suspended rates does not require the following services which are required in the carriage of local traffic: (1) There is no terminal handling at point of receipt on outbound shipments or at point of destination on inbound shipments; (2) there is no billing required by the carrier; (3) one complete pick-up service at Chicago or at Racine is eliminated. The difference in the transportation service required for traffic which moved under these suspended rates is well illustrated in the number

of local deliveries required to handle the respective types of shipments. An analysis for respective periods of time of operations of several of the appellees showed that on the average vehicles carrying their local stock picked up or delivered about nine-tenths of a shipment of local traffic weighing in the aggregate 758 pounds, whereas in handling the traffic which will move under the suspended rates the vehicles at each stop delivered on the average 8.85 shipments having an aggregate weight of 4,667 pounds. In other words, approximately one-tenth as many deliveries were required to handle shipments which move under these rates as are required to handle the same number of shipments moving at local rates.[14]

Furthermore, the elimination of one of the two terminal operations required by local traffic and not required by this traffic results in a saving in transportation expense to the carrier of about 7¢ per 100 pounds, which is equal to 25% of average revenue received (Ex. 8, R. 154, 291). These facts are undisputed. While they are admitted in the Commission's report (R. 18), it finds that they are entitled to no consideration for two reasons: "Respondents admittedly handle traffic for some shippers which is comparable in these respects with the traffic which they handle for the forwarders" (R. 19). The only traffic so comparable, and with respect to which there was no testimony, was traffic of shippers other than forwarders which would be moved under the suspended tariffs under precisely the same rates as the forwarder traffic. There was no admission and no

[14] The foregoing statement is based upon the averages of the number of shipments per stop, and the weight per stop computed from Exhibits 7 and 8, as follows:

	Shipments per stop		Weight per stop	
	Local	Forwarder	Local	Forwarder
Chicago Heights Trucking Co. (R. 281)	.62	2.14	554	740
Elgin Transfer & Storage (R. 288)	1.06	10.40	370	5760
Service Transport Co. (R. 305)	1.00	14.00	1450	7500
Average	.89	8.85	758	4667

testimony that there was any local traffic "which is comparable in these respects" with the traffic to be handled at these rates. But even if the Commission were warranted in assuming without evidence that there were isolated instances in which a shipper in Chicago would deliver a semi-truckload of freight, as pointed out by Chairman Eastman, "the point is immaterial. * * * Differences in conditions surrounding definite classes of traffic are plainly to be judged by their generally prevailing characteristics, not by sporadic exceptions" (R. 24).

The second ground upon which the Commission refuses to consider this dissimilarity in service is "dissimilarity of conditions which respondents may choose to make by employing different methods of handling like kinds of traffic does not justify dissimilarity in rates" (R. 19). Again, the assumption of the Commission is without warrant in the record. This difference in transportation service is brought about not through any voluntary difference in method of handling, but by the difference in the nature of the service required. The local service requires two terminal operations, including the pick-up and delivery, and there is no way whereby appellees can change their methods however they might wish to do so to avoid this necessity. On the other hand, the traffic which would move under the suspended rates does not require two terminal services, but only one, and appellees are only performing their duty to promote "economical and efficient service," one of the very purposes for which the Motor Carrier Act was passed and a policy enjoined by Congress upon the Commission to promote.[15] As stated by Chair-

15 "Sec. 202. (a) It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; **promote adequate, economical, and efficient service by motor carriers**, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and co-ordinate trans-

man Eastman: "The record shows that the methods of handling differ, not because of any arbitrary choice by respondents, but because the methods fit, in each instance, the essentially different conditions which are encountered" (R. 24).

Unlike Traffic.

The third indispensable requisite to a finding of "unjust discrimination" is that it be with respect to a "like kind of traffic." No finding at all is made by the Commission with respect to this element. Evidently it assumed, contrary to the undisputed evidence, that the traffic which would move under these rates is identical with the traffic moving at the local rates. Witnesses, carrier and shipper alike, testified that the traffic to which these rates are applicable consists of through less-than-carload shipments moving uninterruptedly upon through billing for long distances through the coordinated services of truck lines and railroads and forwarders (R. 80, 81, 97, 125, 128, 133, 147, 151), and the court below so found (R. 490). Such traffic in no degree is similar or related to the local shipments which are originated and terminated by appellees and to which the local rates apply. Throughout the entire range of the Commission's reports it will be found that *through traffic* always has been held to be wholly distinct from and *dissimilar* to *local* traffic. In the original report of Division 5 it is stated: "It is also questionable whether traffic * * * is through traffic" (R. 35). This statement, however, was not repeated in the final report of the Commission. Intervening between the two reports, the Commission decided to the exact contrary the *Freight Forwarding Investigation*

portation by and regulation of motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and co-operate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part." (Emphasis supplied.)

case.[16] In this latter case, it appeared that interstate carload shipments of forwarders were billed to Shreveport, Louisiana, each containing individual packages marked for separate consignees and destinations beyond Shreveport. These shipments were then billed by the Louisiana & Arkansas Railway Company as intrastate less-than-carload shipments from Shreveport to destination, upon the ground that they were intrastate movements. The Commission, however, held:

> "The fact that the unit of shipment is changed from carload to less than carload at the break-bulk points is insufficient to impair the character of the interstate movement. *Western Oil Refining Co. v. Lipscomb*, 244 U. S. 346;" (page 284).

And

> "Such outbound less-than-carload shipments, which are integral parts of interstate carload shipments arriving at Shreveport for movement beyond, upon the facts presented are interstate in character, and the fact that the unit of shipment is changed from carload to less than carload at Shreveport does not impair the character of the interstate movement"[17] (pages 285-6).

This latter finding is in accord with the decision of this Court in B. & O. S. W. Ry. v. Settle, 260 U. S. 166, where the Court held that where there was an intention to move the shipment through "neither through billing, uninterrupted movement, continuous possession by the carrier *nor unbroken bulk* is an essential of a through interstate shipment." (Emphasis supplied.)

This Court in Great Northern Railway Company v. Sullivan, 294 U. S. 458, after holding (at page 460) that:

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16 229 I. C. C. 201, decided October 11, 1938.

17 It is interesting to note that subsequent to the hearing in this case, the Railway Company filed a tariff naming proportional interstate rates from Shreveport applicable upon this traffic and containing provisions identical with those of the tariffs here suspended, which tariff is still in effect and was not condemned by the Commission in this proceeding.

> "A proportional differs from a local rate in that it covers only terminal service at place of receipt or at place of delivery but cannot, as does the local rate, cover both,"

citing Lewis-Simas-Jones Co. v. Southern Pacific Co., 283 U. S. 654, where the Court, in distinguishing between the through and local rates, said at page 663:

> "The tariff, as described in the findings, does not purport to apply to the American part of such international transportation. A carload shipment 'originating' at Nogales or at the point where the line of the foreign carrier and that of the defendant touch the boundary or in defendant's railroad yard adjacent to the boundary clearly must be distinguished from a through carload shipment brought to defendant at the boundary by a foreign carrier. The former covers local transportation only and involves two terminal services, one at Nogales, the point where received from the shipper, and the other at San Francisco, the place where delivered to the consignee. The latter involves the transportation of a through car from the point of connection and only the one terminal service at destination. It is manifest that a tariff limited, as is that described in the findings, to shipments so originating on defendant's line does not apply to the American part of the transportation of an international shipment on a through bill of lading."

The Commission itself again and again has held that rates applicable to a portion of a movement of a through shipment may not properly be compared with local rates, since the traffic and the service are different.[18] The traffic which the undisputed evidence shows will move under the

[18] Indiana Refining Co., Inc., v. L. & N. Ry. Co., 155 I. C. C. 380; Alabama Packing Co. v. Alabama Great Southern Ry. Co., 48 I. C. C. 596; Birmingham Rail & Locomotive Co. v. Alabama Great Southern Ry. Co., 152 I. C. C. 761.

suspended rates, being a wholly different kind of traffic from the local traffic, the assumption underlying the Commission's finding is unwarranted and the finding itself must fail.

Dissimilar Circumstances.

A final indispensable requisite to a finding of "unjust discrimination" is that the transportation service be afforded under substantially similar circumstances and conditions. *The rule of equality, of which so much is made in appellants' brief, is applicable only when there is an equality of conditions.* At an early date it was held by this Court in *I. C. C. v. B. & O. Ry.*, 145 U. S. 263, 284, that carriers "are only bound to give the same terms to all persons alike under the same conditions and circumstances, and that any fact which produces an inequality of condition and a change of circumstances justifies an inequality of charge."

The report of the Commission does not consider the undisputed evidence which showed that the conditions surrounding the movement of this traffic were wholly dissimilar from those which obtained with respect to local traffic such as that which moves between a great city such as Chicago and points within its trade or marketing area. From the shipper's standpoint, the evidence was that the manufacturers and merchants at these smaller towns, prior to the advent of the service made possible only by the suspended rates, were at a severe disadvantage with respect to the conduct of their commerce in competition with persons engaged in similar businesses in the larger cities, due to the fact that at such large cities, the comparable service was available through the forwarder consolidation of l. c. l. shipments into carlots which did not require a concentration or distribution truck haul, and that these shippers and receivers of freight and the communities which they serve would be greatly disadvantaged should this service be withdrawn. From the carrier's standpoint, it was shown

that the service provided under these suspended rates was necessary to enable the carriers to provide this service, and to retain this business which they had developed over a long period of time.

The above facts are strikingly similar to those which existed in the case of *Texas & Pacific R. Co. v. Interstate Commerce Commission*, 162 U. S. 197. In that case, the Commission had found[19] that the fact that the carriers were maintaining rates from between seaports and interior towns applicable only on import or export traffic and which were less than the rates for movement of local traffic originating or terminating at the seaport, were unjustly discriminatory under section 2 of the Act. In that case the shippers at the smaller interior towns, just as those similarly situated here, testified that the continuance of such rates was essential to permit them to compete with their competitors at the seaports, and the carriers, that it was necessary in order to permit the traffic to move at all. This Court, after first admonishing the Commission that its attention was "not to be confined to the advantage of shippers and merchants who deal at or near the ports of the United States, in articles of domestic production," but also to consider the interests of the interior cities as well as those of the carrier, held:

> "Moreover, it must not be overlooked that this legislation is experimental. Even in construing the terms of a statute, courts must take notice of the history of legislation, and out of different possible constructions select and apply the one that best comports with the genius of our institutions and is therefore most likely to have been the construction intended by the law-making power. Commerce, in its largest sense, must be deemed to be one of the most important subjects of legislation, and an intention to promote and facilitate it, and not to hamper or destroy it, is naturally to be

[19] New York Bd. of Trade & T. v. Pennsylvania R. Co., 4 I. C. C. 447.

attributed to Congress. The very terms of the statute, that charges must be *reasonable*, that discrimination must not be *unjust*, and that preference or advantage to any particular person, firm, corporation, or locality must not be *undue* or *unreasonable*, necessarily imply that strict uniformity is not to be enforced; but that all circumstances and conditions which reasonable men would regard as affecting the welfare of the carrying companies, and of the producers, shippers, and consumers, should be considered by a tribunal appointed to carry into effect and enforce the provisions of the act.

"The principal purpose of the 2d section is to prevent unjust discrimination between shippers. It implies that, in deciding whether differences in charges, in given cases, were or were not unjust, there must be a consideration of the several questions whether the services rendered were 'like and contemporaneous,' whether the transportation was effected under 'substantially similar circumstances and conditions.' To answer such questions, in any case coming before the Commission, requires an investigation into the facts; and we think that Congress must have intended that whatever would be regarded by common carriers, apart from the operation of the statute, as matters which warranted differences in charges, ought to be considered in forming a judgment whether such differences were or were not 'unjust.' Some charges might be unjust to shippers—others might be unjust to carriers. The rights and interests of both must, under the terms of the act, be regarded by the Commission" (pp. 218, 219).

Appellants (Brief, p. 24) apparently concede that this decision is controlling on this issue, unless it is to be overruled in this case, which they ask upon the ground that the Court looked upon the Interstate Commerce Act (in 1896) as experimental legislation and that there was a strong dissent by three of the Justices. The rule announced in that case has been followed as authority many times in the four

decades which have followed, and, so far as our search reveals, has never before been questioned.

In *Texas & P. R. Co. v. United States*, 289 U. S. 627, 636, 637 (1932), this Court had this to say with respect to the *Texas & Pacific* case, supra:

> "The theory of the Act is that the carriers in initiating rates may adjust them to competitive conditions, and that such action does not amount to undue discrimination. Texas & P. R. Co. v. Interstate Commerce Commission, 162 U. S. 197, 40 L. ed. 940, 16 S. Ct. 666, 5 Inters. Com. Rep. 465. There the charging of rates on import traffic moving from a port on through bills of lading, much lower than those fixed for domestic transportation was held not to amount as matter of law to discrimination forbidden by section 3. The carrier showed, in justification of the lower rates on import traffic, that unless these were permitted water and rail-and-water competition would divert the traffic away from the port of New Orleans and the carrier's lines extending from that port. *Since that decision it has been recognized that export and import shipments, although not made on through bills, might lawfully be transported at rates below those charged for domestic traffic between the same points.*" (Italics supplied.)

While there was a dissent in the case just cited, it was not upon the point, and today there exists from and to practically every port in the United States rates between such port and the interior which are lower on import traffic than they are on domestic traffic moving between the same inland points.

Judicial Review.

The argument of the learned counsel for appellants is directed largely to establishing the thesis that, regardless of what the facts were before the Commission, the courts are bound by its find-

ings, if such findings per se and without regard to the facts, are rational. We respectfully submit that if this rule is true, then arbitrary power, unfettered by any constitutional or judicial restraint, will be lodged in these administrative bodies. Under such a rule, all that would be necessary for a commission to do would be to ignore entirely the record before it and make such findings as might appear to it necessary or desirable to justify the order which is makes. Any such rule is wholly incompatible with American institutions and system of government.

The rule announced by this Court is that a common carrier has the right to initiate rates, to establish its own rate policies, to make special rates to increase its business, to dispose and apportion its rates so as to meet the necessities of commerce and its own particular situation, and that that right cannot be controlled by the Commission unless and until some provision of the Interstate Commerce Act is infringed. This Court in *Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Commission*, 162 U. S. 184, 197, quoted with approval from *Interstate Commerce Commission v. Baltimore & O. R. Co.*, 43 Fed. Rep. 37, 3 I. C. R. 92:

> "Subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate, so as to give undue preference or advantage or subject to undue prejudice or disadvantage persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers as they were at common law, free to make special contracts looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce, and generally to manage their important interests upon the same principles which are regarded as sound, and adopted in other trades and pursuits." (40 L. ed. 939.)

While, as argued by learned Counsel, the Commission

may draw inferences, these inferences must be drawn from facts of record and not, as here, from other inferences or from suppositional hypotheses, for, as stated by this Court, speaking through the Chief Justice, in *A. T. S. F. v. I. C. C.*, 284 U. S. 248, 262:

> "But the Commission, exercising the delegated regulatory authority which does not have the freedom of ownership, operates in a field limited by constitutional rights and legislative requirements."

This Court had occasion to apply the rule in a comparatively recent case, *United States v. Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499 (1935). In that case, a unanimous court, speaking through the late Justice Cardozo, annulled an order of the Interstate Commerce Commission which had ordered cancellation of certain tariffs of the railroad company on the ground that such tariffs were contrary to the policy of the Act and would lead to a disruption of rate structures, impairing the revenues of carriers and their ability to provide adequate and efficient transportation service, and cause a disruption of long standing rate relations existing for competitive purposes among several Indiana groups, from which the Commission concluded that the proposed rates were unreasonable and in violation of sections 1 (5) and 15 (a) (2) of the Interstate Commerce Act. Said this Court:

> "All that the Milwaukee has done is to initiate a schedule which must be upheld as lawful unless adequate reasons are presented for setting it aside. Cf. *Anchor Coal Co. v. U. S.* (D. C.), 25 F. (2d) 462; *Atchison, T. & S. F. R. Co. v. U. S.*, 279 U. S. 768, 773, 73 L. ed. 947, 950, 49 S. Ct. 494." (p. 510.)

The situation is identical here. These carriers initiated these schedules, and there is nothing in this record that in any way shows that they violate the Act in any respect.

2. The suspended tariffs are not technically deficient.

Finding of Commission.

While exceedingly difficult to rationalize, it would appear that the Commission found that the tariffs were technically deficient under the provisions of the tariff section of the Act (217) in two particulars: (1) That they do not contain adequate rules for policing; (R. 19) and (2) that they are lacking in clarity and definiteness because the tariffs denominated the suspended rates as "proportional rates," whereas the Commission found that "they were not in fact proportional rates." (R. 17)

Policing.

The Commission's finding that there was a lack of adequate policing rules is based upon the following statement:

> "Freight forwarders arrange for the transportation not only of freight coming from beyond or going beyond the reforwarding points but of large quantities of freight originating at or destined to such reforwarding points. There is no evidence that respondents would have any way of enforcing provisions against substitution of property originating at or destined to the reforwarding points even if such provisions were incorporated in the tariffs." (R. 20)

This statement of fact with respect to the traffic of freight forwarders was not based upon any evidence in the record and is contrary to the actual fact (which is *not* in the record) which is that while the freight forwarders did have freight originating at the reforwarding points and destined to reforwarding points, none of such freight originates at or is destined to the other points named in these tariffs. It is stated simply to show how far a Commission may go astray, when it attempts to base its findings upon facts not of record.

Assuming, however, the truth of the statement, it will be found that the tariffs provide adequate policing provisions. The policing provisions are practically identical in all of the three tariffs. Referring to the first tariff, (Exhibit 1), it will be found in items 5 and 10 (R. 209) that the rates are applicable only on traffic moving from beyond the breakbulk point as an origin, or moving to the breakbulk point as a destination. In Rule No. 5 (R. 207) it is provided that a period of not more than 48 hours will be allowed at any reforwarding point within which time the shipments must be reforwarded, and under Rules Nos. 10 and 15 (R. 207) the billing upon which the shipment is carried by appellees must show the reference to carriers' billing or manifest, where the shipment comes from beyond, and must show the ultimate destination to which shipment is to be reforwarded, and as these shipments move on the through billing of the forwarding companies, they would necessarily show the original consignor and origin point, and the ultimate consignee and destination point.

We respectfully submit that substitution of tonnage under these circumstances is almost impossible. It can be done only by a deliberate false billing by the shipper. Any rate of any carrier may be avoided and defeated if the shipper sees fit to bill the shipment falsely. For instance, if a sealed box is brought to a carrier, actually containing articles classified, we will say, at a multiple of first class rate, but billed as articles taking the fourth class rate, the carrier has no way of ascertaining whether or not that billing is correct. In other words, if a shipper sees fit to bill fur coats as cotton piece goods, there is no way in which the carrier can police that billing. That policing lies in the provision of the Interstate Commerce Act which makes it a felony for a shipper falsely to bill his freight. If any shipper substituted tonnage under the tariffs in-

volved in this case and bills that tonnage as being a part of a carload consignment breaking bulk in Chicago, when in fact it originated in Chicago, that shipper would be guilty of the same offense of false billing. If it is sufficient protection in one case, it should be sufficient in the other.

Furthermore, in *Southern Pacific Co. v. Interstate Commerce Commission*, 200 U. S. 536, the Court, in annulling an order of the Commission cancelling a tariff rule upon the theory that such rule would permit violations of the law, held: "All the facts referred to by the Commission are nothing but statements as to how, under such a rule, there might occur a violation of that section, but we find nothing in the facts stated by the Commission showing that such violation had occurred. * * * *Because opportunities for the violation of the act may occur by reason of the rule is no ground for holding, as a matter of law, that such violations must occur, and that the rule itself is therefore illegal*" (pp. 555, 556).

Proportional Rates.

The Commission found that the tariffs in question violated section 217 (c) because the tariffs' proposed rates were denominated "proportional rates" when in fact they were not proportional rates. On the title page of the tariffs in question, the tariff is designated one "naming proportional rates between * * * applying on all freight of every class and description * * * when such freight originates at or is destined to stations named herein when final destination or origin is located outside of the States of Illinois or Wisconsin" (R. 204). So far as our examination reveals, this is the only place in the tariff where the term "proportional rates" is used. The tariff rules of the Commission which are in evidence (R. 413, 422, 426) do not require that the title page of a tariff describe the nature of the traffic or the application of the tariff.

There were exhibited in evidence a large number of other tariffs, many approved by the Commission, many naming rates under almost identical circumstances and other under identical circumstances. Despite these uncontradicted facts, the Commission held that the rates were not proportional rates. While we insist that the tariffs are proportional rates under the decisions of this Court[20] as well as an unbroken line of decisions of the Commission,[21] we will not labor that point. At the most the word "proportional" was surplusage. The application of the rates was accurately and definitely described in the tariff proper, and the adequacy of this description was tacitly conceded by the Commission.

This situation is accurately summed up by Chairman Eastman (R. 26):

> "Possibly we could, under our authority to prescribe regulations governing the publication of tariffs, establish rules for the designation of rates, but no such rules could lawfully preclude differences in rates based on differences in circumstances and conditions. The suspended rates are justified by that principle of the law, and whether they are rightly or wrongly termed 'proportional' rates is wholly immaterial. If this designation violates any of our rules, which in fact it does not, the remedy for such a violation is a mere change in the designation and not the final cancellation of the rates."

In any event, it is quite obvious that the alleged technical violations of section 217 (a) and (c) were not sufficient grounds to warrant the Commission in canceling the entire tariffs. The most that it would have been authorized to do, if this were the ground upon which it acted, would have been to require appellees by supple-

[20] See Great Northern Railway v. Sullivan, supra.

[21] See Tariffs Embracing Motor Trucks, 91 I. C. C. 539, 549, Lumber from San Francisco Bay Points, 78 I. C. C. 760.

ment to correct these deficiencies, if any, a frequent procedure.

In *Maritime Ass'n of Boston v. Railroads*, 95 I. C. C. 539, and in *Trunk Line Ex-Lake Iron Ore*, 69 I. C. C. 589, and in *Lake Cargo Coal Rates*, 101 I. C. C. 513, 126 I. C. C. 309, 200 I. C. C. 4, the Commission approved rates on carloads of coal from various shipping points to Lake Erie ports when trans-shipped beyond by water, irrespective of whether the water carrier is a private carrier or a common carrier or the owner.

In *West Virginia Coal & Coke Co. v. Railroads*, 200 I. C. C. 179 (*Ex-Ohio-River Coal to Ohio Points*, 185 I. C. C. 211), and in *American Rolling Mill Co. v. B. & O. R. Co.*, 173 I. C. C. 357, the Commission approved the proportional rates on carloads of coal from Cincinnati which reached Cincinnati by barge in barge lots. In all of these cases the proportional rates were lower than the contemporaneous local rates.

3. **Appellees will be irreparably injured by the order.**

Over a course of years, and with the expenditure of time, effort and capital, these appellees have developed a large traffic. This business constitutes a large part of their total business and if it is lost some of these appellees will be forced into bankruptcy and the operations of all of them will be severely curtailed. At the present moment, the traffic is being handled, as it has been handled for many years past, on the joint through rates of the forwarder companies and appellees. By an order of the Commission the *Acme* case, supra,[22] the joint tariffs naming these rates have been ordered stricken from the Commission's files effective June 11, 1940. The decree of a statutory court of the southern district of New York, dismissing an

22. Acme Fast Freight, Inc., 17 I. C. C. 549.

appeal to annul and set aside the order, has been affirmed by this Court.

Under the suspended tariffs, the rates filed are subject to all the protections and safeguards of the Interstate Commerce Act. The tariffs set out the conditions under which the rates apply. These rates are available to all shippers alike, whether they be forwarders or others. Certainly there is nothing in the Act which denies these appellees the right to continue to handle the traffic which they have developed over many years under rates which are lawful under the provisions of the Interstate Commerce Act, merely because forwarders as well as other shippers may ship at those rates. The Court below on undisputed evidence held that when the order of the Commission in the *Acme* case, supra, becomes effective, appellees here will be unable to handle this traffic any longer unless the suspended rates become effective. The business fortunes of a number of these appellees, as well as their operations, are at stake in this proceeding. No shipper and no carrier having an interest in these rates has protested or complained thereof. So far as this record is concerned, their becoming effective would not injure a single person within the entire United States. If the rates are sustained *no one is disadvantaged. If they are canceled some of appellees are ruined, and the shippers of hundreds of little towns deprived of a necessary transportation service.*

We respectfully submit that the decree of the lower Court, finding the order of the Commission unlawful and void as contrary to the statute and the undisputed evidence, perpetually enjoining its enforcement, should be affirmed by this Court.

Respectfully submitted,

R. E. QUIRK,
JOHN R. TURNEY,
Attorneys for Appellees.

Washington, D. C.
April 15, 1940.

SUPREME COURT OF THE UNITED STATES.

No. 724.—October Term, 1939.

The United States of America and Interstate Commerce Commission, Appellants, *vs.* Chicago Heights Trucking Co., et al.	Appeal from the District Court of the United States for the Northern District of Illinois.

[May 20, 1940.]

Mr. Justice Black delivered the opinion of the Court.

Respondents are forty-one interstate common carriers operating motor vehicles subject to the Interstate Commerce Commission under the Federal Motor Carrier Act of 1935.[1] Our decision turns upon the validity of an order of the Commission cancelling certain proposed tariffs of these carriers upon the ground that they were unlawfully discriminatory in affording lower rates to "forwarders" of freight than to other shippers.

Forwarders utilize common carriers by rail and motor truck to transport goods owned by others. They solicit and obtain many small shipments, from various points within an area, and cause them to be carried in less than truck-load or carload lots to a concentration center within the area. There they are assembled by the forwarder for further transportation in truck-load or carload lots. Although the forwarder gives owners of individual small shipments his own contract corresponding in form to through bills of lading and assumes responsibility for safe through carriage, the forwarder customarily arranges for the pickup, assembly and transportation of the shipments by carriers for hire. And the forwarders, not the owners of the goods, select the carriers and route the shipments. Upon arrival of a truck-load or carload of the assembled small shipments at a distribution center, the bulk shipment is broken up, the forwarder separates and takes possession of the original small shipments and arranges, where necessary, their further carriage to their

[1] 49 Stat. 543.

various final destinations in the area served by the particular distribution point. In this final carriage of the small shipment to its ultimate destination, the forwarder again utilizes carriers for hire to move these less than truck-load or carload lots. Thus, forwarders may use the service of carriers to assemble shipments of less than truck-load or carload lots at their concentration center, to transport the assembled truck-load or carloads to a distribution center and to carry the broken up small shipments beyond their break-bulk distribution center.

The forwarding business has been built upon the expectation that a material part of the transportation which it causes to be provided for small shippers can by consolidation of small shipments be obtained at truck-load or carload rates. For the forwarders' business was originally made profitable because it could operate upon the margin of profit represented by the difference between railroad carload rates paid by the forwarder and the higher rates, approximating less than carload rates, which the forwarder charged the owner of a shipment.[2] But forwarders in using railroads enjoy no special tariff rates and pay the same published carload and less than carload rates that other shippers pay. And the question here is not whether the Commission should have approved as lawful lower rates for truck-loads than for smaller shipments, but whether the court properly set aside the Commission's order which had directed cancellation of respondents' tariffs providing lower rates for certain less than truck-load shipments solely because they had previously been, or were intended subsequently to be, consolidated in truck-loads with other individual shipments.

Upon the Commission's own motion, a hearing was held and the Commission ordered the cancellation of these tariffs.[3] Respondents brought suit in the District Court to set aside and restrain enforcement of the Commission's order. A three judge Court held the order void and perpetually enjoined its enforcement. The case is here on direct appeal by the United States and the Interstate Commerce Commission.[4]

Respondents' tariffs would be available to forwarders who arrange assembling, transportation and distribution services in the

[2] See Int. Comm. Comm. *v.* Del., L. & W. R. R., 220 U. S. 235, 243.

[3] Division 5 first reported, 10 M. C. C. 556. On reconsideration, the report was by the Commission, 17 M. C. C. 573.

[4] 28 U. S. Code, 45, 45(a), 47(a), 345.

trade areas surrounding concentration and break-bulk centers in Illinois, Wisconsin and Indiana. And the Commission found that "In practical effect these rates can be used by few, if any shippers, except the forwarders." Since in its opinion these tariffs were "materially lower than respondents' local rates on like traffic between the same points",[5] the Commission found that "the forwarders . . . and possibly a few large shippers . . . will be afforded transportation at rates lower than the rates . . . charged certain other shippers under substantially similar circumstances and conditions, in violation of Section 216(d)."[6] In the view we take, it becomes unnecessary to consider additional grounds upon which the Commission found the tariffs violated another Section of the Act.[7]

So far as pertinent here, the tariffs before us propose rates for transportation of commodities in less than truck-load lots. All commodities (with exceptions not here material) are as a group given the same special rate. In general, respondents' other tariffs provide rates which vary for different types of commodities. Accordingly, if the suspended rates were in effect, transportation of the same commodity over the same haul might cost a forwarder less than other shippers.

The findings of the Commission and the supporting evidence reveal that local less than truck-load rates charged shippers are in many if not most instances greater than rates on like commodities between the same points to be afforded forwarders under the proposed tariffs which the Commission ordered cancelled. However, upon reviewing the identical evidence which the Commission had

[5] Two Commissioners in dissent thought this was "true only in part. They are lower than some, but by no means all, of the corresponding local rates."

[6] Sec. 216(d): It shall be unlawful for any common carrier by motor vehicle engaged in interstate or foreign commerce to make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, gateway, locality, or description of traffic in any respect whatsoever, or to subject any particular person, port, gateway, locality, or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discriminations, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

[7] See Sec. 217(a), (b).

[8] The District Court found that some of the local "rates are higher and some lower than the suspended rate", but the average revenue derived by the respondents from local rates "per hundred pounds . . . upon the whole, is less than" that produced by the suspended rates.

considered, the court below drew inferences opposite to those of the Commission and disagreed with its conclusion that in operation the disputed tariffs would violate Section 216(d) which forbids undue preferences and advantages that lead to unjust discrimination. The exercise of judgment by the Commission and by the court in appraising the same evidence has led to these opposing conclusions.

The tariffs apply on "'All freight' (except as otherwise provided . . . , which has been transported to . . . [an] origin station . . . , as a part of a truck-load consignment or carload consignment moving under tariffs or schedules lawfully on file with the Interstate Commerce Commission and immediately reshipped in the original packages as an L. T. L. [less than truck-load] shipment: or

"(b) 'All freight', . . . which is to be transported to . . . [a named] destination station . . . as an L. T. L. shipment, and immediately reshipped in the original package as part of a truck-load consignment or carload consignment moving under tariffs or schedules lawfully on file with the Interstate Commerce Commission."

It is evident that these special tariffs are available only to shippers who intend and are able (a) to arrange immediate further transportation in carloads or truck-loads for commodities that have been carried in less than truck-load lots, or (b) to move commodities in less than truck-load lots immediately after they have been carried as part of a carload or truck-load. While, as has been noted, some few large shippers may possibly avail of the tariffs, there is no question about the finding of the court below that the "principal traffic which will be carried under the suspended rates is what is called by the Commission 'freight forwarder traffic.'"

Almost since its inception the Commission has been called upon to exercise its judgment relative to the Interstate Commerce Act as applied to forwarders.[9] Initial hostility of the railroads caused them to deny forwarders the advantage of their published rates. However, when called upon to decide, the Commission held that the railroads' action discriminated against forwarders and declared for-

[9] See, e. g., Export Shipping Co. v. Wabash R. R. Co., 14 I. C. C. 437; Freight Forwarding Investigation, 229 I. C. C. 201; Acme Fast Freight, Inc., Common Carrier Application, 8 M. C. C. 211.

warders to be entitled as shippers to published carload rates. This Court sustained the action of the Commission.[10]

About 1920, prior to the Motor Carriers Act, forwarders began to utilize motor carriers. Forwarders and truckers operated under individual contracts providing divisions of the complete line haul charge. After the tariff provisions of the Motor Carriers Act went into effect, forwarders filed tariff schedules with the Interstate Commerce Commission on the assumption that they were subject to the Act as common carriers. Tariffs so filed were, however, ordered cancelled by the Commission upon the ground that forwarders were not motor carriers subject to the Act. A three judge District Court upheld the Commission[11] and this Court affirmed.[12]

Here, the complaint itself has alleged that the so-called "proportional" tariffs under consideration "name rates which are identical with" the divisions of through L. C. L. rates which respondents would have received had the forwarders' tariffs been upheld. And, as stated by the Commission, "Stripped of protective coloring, these rates are published as proportional rates primarily as a matter of expediency to serve the purpose of certain freight forwarders and to perpetuate in another form so-called divisions of purported joint rates of the freight forwarded."

Respondents contend that the Commission improperly concluded that the cancelled tariffs create undue preferences or advantages resulting in unjust discriminations in violation of 216(d) because there was no evidence that the suspended rates would subject any particular person or type of traffic to disadvantage or injury; while the suspended rates, applicable on all classes of traffic, might be lower as to some commodities, the aggregate compensation from them would not be less than that from like local traffic if all such local traffic is considered; services rendered by respondents to the forwarders are unlike and less burdensome than local services rendered individual shippers; services rendered the forwarders are on longer hauls than on other local less than truck-load commodity traffic; terminal services rendered forwarders by respondents are less expensive than in the case of other shippers; forwarders bear

[10] Int. Comm. Comm. v. Del., L. & W. R. R, 220 U. S. 235.

[11] 8 M. C. C, 211, Acme Fast Freight, Inc. v. United States, 30 F. Supp. 968

[12] Acme Fast Freight, Inc. v. United States, — U. S. —, April 8, 1940.

the expense of soliciting business thereby relieving respondents of that burden; the only evidence before the Commission was introduced by respondents; and no shippers complained of injury.[13]

Weighty as these arguments were, they did not persuade the Commission that forwarders could without discrimination be given lower L. T. L. rates than other shippers. The Commission was impressed by the facts that the proposed rates were not in reality available to all of the shipping public and in practical effect would operate for the special benefit of the forwarders and would not benefit the owner of goods shipped; that Section 216(d) of the Act represented a manifestation of the congressional purpose in Part I, Sec. 2, and Part II, Sec. 202(a) of the Interstate Commerce Act, to prevent favoritism by insuring equality of treatment on rates for substantially similar services; and that the proposed tariff would afford "forwarders . . . ., and possibly a very few large shippers . . . ., transportation at rates lower than the rates which . . . [would] be charged certain other shippers under substantially similar circumstances and conditions in violation of Section 216(d)." Moved by these considerations, the Commission concluded that the mere fact that forwarders might ordinarily furnish a volume of traffic greater than but identical in kind with that furnished by individual shippers did not justify lower rates for forwarders.

"It is not disputable that from the beginning the very purpose for which the Commission was created was to bring into existence a body which, from its peculiar character would be most fitted to primarily decide whether from facts, disputed or undisputed, in a given case preference or discrimination existed."[14] And where a court substituted "its judgment as to the existence of preference for that of the Commission on the ground that where there was no dispute as to the facts it had a right to do so, [the court] obviously exerted an authority not conferred upon it by the statute."[15] So here, it has been pointed out that there was no dispute in the evidence before the Commission, all of which was introduced by respondents. But the differing inferences as to discrimination finding possible support in that evidence are made to stand out by the

[13] These arguments for sustaining the tariffs were all forcefully presented in the dissenting opinion of Chairman Eastman, concurred in by Commissioner Mahaffie.

[14] United States v. Louisville & Nashville Railroad Co., 235 U. S. 314, 320.

[15] *Id.*

ersuasive reasoning advanced in both the majority and minority pinions of the Commission. The Interstate Commerce Act does not ttempt to define an unlawful discrimination with mathematical recision. Instead, different treatment for similar transportation ervices is made an unlawful discrimination when "undue", "unust", "unfair", and "unreasonable". And the courts have alays recognized that Congress intended to commit to the Commission the determination, by application of an informed judgment to xisting facts, of the existence of forbidden preferences, advantages nd discrimination.[16]

A special allowance to a forwarder as an inducement to ship oods by a particular carrier would be an illegal rebate.[17] Similarly, and as previously pointed out, forwarders are shippers protected by the Interstate Commerce Act from discrimination by carriers.[18] As shippers, forwarders do business subject to the paramount principle that Congress intended our national transportation system to operate without favoritism. Pursuant to its duty o apply that principle upon a national scale, the Commission can revent unjust rate discrimination by carriers against other shipers and in favor of forwarders. The particular problem here inolved is but a segment of the larger complicated national problem f rates with which the Commission must deal. As exemplified by his record, the Commission is "informed by experience"[19] of years n its consideration of the relationship of forwarders to our national ransportation system.

The fact that the Commission acted on its motion without complaints by individual shippers did not detract from the Commission's power to protect and maintain a transportation system free rom partiality to particular shippers. The Commission acted in

[16] Swayne & Hoyt Ltd. v. United States, 300 U. S. 297, 304; Interstate Comm. Comm. v. Del. L. & W. R. R., *supra*, at 255; Manufacturers Ry. Co. v. United States, 246 U. S. 457, 481. Texas & Pac. Ry. v. Interstate Comm. Comm., 162 U. S. 197, represents an apparent exception, at an early date before the function of the Commission had become fully outlined against the background of time and the empiric pattern of litigation. (Commission's bill to enforce its holding that the difference between domestic and imported merchandise could not justify different rates between the port of reception and point of delivery, ordered dismissed).

[17] Lehigh Valley R. R. Co. v. United States, 243 U. S. 444.

[18] Interstate Comm. Comm. v. Del. L. & W. R. R., *supra*, at 255.

[19] Cf. Standard Oil Co. v. United States, 283 U. S. 235, 239; Illinois Central R. Co. v. Interstate Comm. Comm., 206 U. S. 441, 454.

its capacity as a public agency and carried out duties imposed upon it by Congress in the interest of shippers generally, the national transportation system and the public interest.[20] Its order was the embodiment of the Commission's judgment that the proposed tariff was a discrimination prohibited by the Act. "The judgment so exercised, being supported by ample evidence, is conclusive."[21]

The judgment of the court below is reversed and the bill is ordered dismissed.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

[20] Cf. Inland Steel Co. v. United States, 306 U. S. 153, 157.

[21] United States v. Illinois Central R. R., 263 U. S. 515, 525, 526.